The law of negotiable instruments

James Matlock Ogden

THE LAW

OF

NEGOTIABLE INSTRUMENTS

INCLUDING

PROMISSORY NOTES, BILLS OF EXCHANGE, BANK CHECKS AND OTHER COMMERCIAL PAPER

WITH

THE NEGOTIABLE INSTRUMENTS LAW ANNOTATED

AND

FORMS OF PLEADING, TRIAL EVIDENCE AND COMPARATIVE TABLES ARRANGED ALPHABETICALLY BY STATES

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PREFACE.

The importance of the Law of Negotiable Instruments, or the Law of Bills, Notes and Checks, will be realized when it is considered that over ninety per cent of the work of paying for and effecting the exchange of interstate commerce is carried on today by means of commercial paper.

It has been the endeavor of the author to furnish the practitioner and the student of the law such a practical presentation of the elementary principles of negotiable instruments as may serve, with the aid of its references to judicial decisions, as a complete and convenient guide in this important subject of the law.

The law herein set out is the law settled by the authorities rather than the writer's own views. The object has been to enable one readily to find the law of bills, notes and checks in any state or territory in the United States. The peculiarities of the law in those states which have adopted the Negotiable Instruments Law are set forth and all modifications are pointed out. The peculiarities of the law in those states which have not adopted the Negotiable Instruments Law are collected and arranged alphabetically by states.

Thus the writer has endeavored to cover the entire field of the law of negotiable instruments, citing cases from every jurisdiction.

In the text discussing the elementary principles, the Negotiable Instruments Law is interwoven, distinguished by being printed in italics; the text of the law as printed is that of the New York Act. A table, however, is inserted to facilitate the finding of parallel sections of the acts or laws enacted by all

other jursdictions. All decisions construing the Negotiable Instruments Law since its adoption by the first state up to July 1st of the present year are cited; also all decisions of the English law courts which affect corresponding provisions of the Bills of Exchange Act of 1882.

That part of the text relating to the Negotiable Instruments Law will be found valuable in those jurisdictions which have not adopted that law, since most of its concise statements of rules are of application in all jurisdictions, whether the law has been adopted or not.

With the hope that herein the principles of negotiable instruments have been made clearer, the writer submits this work and asks indulgence for any oversights.

JAMES MATLOCK OGDEN.

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PART I.

NEGOTIABLE INSTRUMENTS

CHAPTER I.

GENERAL CHARACTERISTICS AND GENERAL FORM OF BILLS, NOTES AND CHECKS.

§ 1. Introductory.
2. Form of promissory note.
3. General characteristics of promissory note.
4. Form of bill of exchange.
5. General characteristics of bill of exchange.
6. Form of check.
7. General characteristics of check.

§ 1. Introductory. The most common forms of commercial paper used today in commercial transactions are promissory notes, bills of exchange and bank checks. At present these constitute the medium of exchange for about ninety per cent of all commercial transactions. In this treatise these three instruments will be considered and it is essential in the beginning that a clear idea should be had in a general way of the characteristics and form of such instruments.

§ 2. Form of promissory note. The following is a simple form of a promissory note:

$200.00

New York City, New York,
December 1, 1908.

Six months.....after date I.....
promise to pay to the order of William Redding.....
Two Hundred.....Dollars
at the First National Bank.
Value received.

No..... *Due.....* *JOHN MORRIS.*

The following is a form of a promissory note which is common in some jurisdictions:

$200.00 Indianapolis, Ind., December 1, 1908.

Six months.....after date I promise to pay to the order of William Redding..... at The Eagle National Bank, of Indianapolis, Ind. Two Hundred.....Dollars

With five per cent Attorney's fees, upon the principal of this note. Value received, without any relief whatever from Valuation or Appraisement laws of the State of Indiana. With interest at the rate of eight per cent per annum after maturity until paid. The drawers and endorsers severally waive presentment for payment, protest, notice of protest, and notice of non-payment of this note.

JOHN MORRIS.

§ 3. General characteristics of promissory note. Let us examine the parts of the above instrument in a general way, commencing with the upper left corner of the instrument. (a) We note first the figures, "$200.00." This is to indicate the amount of the note and being in figures is more quickly grasped than if in writing. If there is a conflict between the figures and the writing below on the instrument, the writing will control. (b) The place, "Indianapolis, Ind.," shows the place where this contract to pay is entered into, and as the laws of the various states differ as to the requisites of such a contract and as to the enforcement of the same it is generally essential that the place of entering into the agreement should be set out so that it may be clear just what law governs as to the contract or instrument. (c) The date, "December 1, 1908," is likewise essential so as to determine when the note is due and from what time interest is to be charged and whether or not the collection of the instrument is barred by the statute of limitations. (d) The time, "Six months after date," indicates the period of time for which the instrument is to run or indicates when the promise on the instrument should be fulfilled. (e) The promise, "I promise to pay," is an absolute promise to do something, that is, to pay; it does not read, if so and so happens or does not happen I promise to pay, but it is connected with no conditions of any nature.[1] (f) The words "to the order of," signify a promise to pay it to the order of any who

[1] Grinnison v. Russell, 14 Neb. 521, 16 N. W. 819, 14 Am. Rep. 126; Iron City Nat. Bank v. McCord, 139 Pa. St. 52, 21 Atl. 143, 23 Am. St. Rep. 166, 11 L. R. A. 559; Neg. Inst. Law, §§ 20 (1), 23 (4); Bills Exch. Act. § 3.

may be designated. We shall consider in a subsequent chapter whether such words are absolutely necessary and whether they should always be in the form indicated. (g) The name, "William Redding," is the person to whose order something is to be paid and he is known as the payee. (h) Then follow these words, "at the Eagle National Bank of Indianapolis, Indiana," indicating where the note is to be paid. (i) The amount "Two Hundred Dollars," indicates, as the figures did, the sum promised to be paid. The same being in writing cannot be so easily altered and since it takes longer to write the words than the figures the words are more likely to be accurate. (j) The phrase, "with five per cent Attorney's Fees," indicates that if William Redding, the payee, or any one to whose order he should make it payable, shall find it necessary to employ an attorney to collect the amount, five per cent additional will be paid by the party to the instrument who makes it necessary that an attorney should be employed. (k) The words "value received," indicate that a consideration was given for the note but most jurisdictions hold that these words are not necessary since a consideration is presumed. (l) The phrase, "without any relief whatever from Valuation or Appraisement Laws," shows that if the note is not paid when it should be and suit is brought and judgment recovered, then the one against whom judgment has been recovered waives any rights that he may have as to requiring that the property taken to satisfy the judgment, shall be valued or appraised by persons appointed for that purpose, and the property taken may be sold at any price. Thus the delay for a valuation and appraisement is avoided. (m) The words, "with interest at the rate of eight per cent per annum after maturity until paid," show what interest is to be paid by the maker in addition to the two hundred dollars if not paid when due. This interest will be calculated from June 1, 1909, the date of maturity, up to the time the note is paid. The per cent set out is eight per cent and we shall see in a later part of this work that different states have different laws governing the rate of interest which may be charged. (n) By the words, "the drawers and endorsers severally waive presentment for payment, protest, and notice of protest and non-payment of this note" is meant that the drawers (or persons who make the note) and the endorsers (or persons through whose hands the note passes and who write their names on the back of it), waive any rights that they may be entitled to because the instrument when due was not properly presented for payment and the proper notice was not given to other parties who should have notice of the non-payment and other facts in connection therewith.

Thus if such rights were not waived and William Redding should indorse the note, that is, write on the back of the note an order that it be paid to John Graham and John Graham in turn should indorse it, that is, order it to be paid to James Spencer, and on June 1, 1909, when the note became due John Morris, the maker, refused to pay James Spencer, the holder, then, in order for James Spencer to recover from John Graham on the note it would be necessary for him to present the note to John Morris for payment and then notify John Graham of the refusal of John Morris to pay and notify him that he, James Spencer, expected to look to him for the payment of the note. In other words it would be necessary to present the note to John Morris for payment unless the indorsers waived presentment for payment and it would be necessary to notify the indorsers of the non-payment unless notice of non-payment of the note was waived. The contract of John Graham is that he will pay the note provided it is presented to the maker, John Morris, and in case John Morris does not pay it and he, John Graham, is notified of that fact, then he, John Graham, will pay it.

In case the law should require the note to be protested in order to bind the drawers and indorsers, it would be necessary for a notary public to take the instrument to John Morris and John Morris would state to the notary public that he refused to pay it; the notary would make out a paper stating that the instrument had been dishonored, and that he had protested it for non-payment and to this statement he would attach his seal.[2] This is the protest, it is not the notice of the protest. The protest then is a solemn declaration in writing made by the notary public that the instrument has been dishonored by a refusal to pay it.[3]

At the trial this statement of the protest by the notary would be good proof that the instrument had been protested and the notice had been given to John Graham. After the instrument is protested as above set out, the notary would send notice to all those parties on the instrument whom the owner desired to hold responsible, which notice would state that the instrument had been presented for payment, that payment had been refused, and that the instrument had been protested for non-payment.

The stipulation in this instrument waiving protest and notice of protest waives these rights, otherwise it would be necessary for James Spencer, the holder, to take these steps in order to recover from John Graham, an indorser, in case the instrument was

[2] Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Shields v. Farmers Bank, 5 W. Va. 254.

[3] Townsend v. Lorain Bank, 2 Ohio St. 345; Swayze v. Britton, 17 Kan. 625.

one which the law required to be protested. The contract of the indorser under such circumstances is that he will pay the instrument provided the maker refuses to pay it and the owner of the instrument protests it and gives notice of that fact.

(o) "John Morris" is the maker or drawer of this note. He is the one who promises to pay it in the first instance. The note may be signed by more than one as we shall consider more fully, in another part of this work.

§ 4. Form of bill of exchange. The following is the ordinary form of an inland bill of exchange:

$120.00 *Chicago, Ill., December 1, 1908.*
.....Thirty days after date.....
Pay to the order of John Matlock.....
One Hundred and Twenty.....Dollars.
Value received, and charge the same to account of
To Irving Dean,
Jamestown, N. Y.
HENRY HAMILTON.

§ 5. General characteristics of bill of exchange. Let us examine this instrument, considering, however, only those formal and essential parts which are not found in the promissory note. There are three parties to this instrument; John Matlock is the payee, Henry Hamilton is the drawer and Irving Dean the drawee. Irving Dean, the drawee, becomes Irving Dean, the acceptor, by writing "accepted" and his name, or words of similar import, across the face of the instrument.

§ 6. Form of a check. The following is the common form of a check:

Detroit, Mich., December 1, 1908. *No. 15.*
The Eagle National Bank.
Pay to the order of Albert Carter.....$200.00
.....Two Hundred.....Dollars.
JOHN MARSH.

§ 7. General characteristics of check. A check is the most common instrument and in explaining the other two instruments all parts of this instrument have been explained. Albert Carter is the payee and John Marsh is the maker or drawer and the Eagle National Bank is the drawee.

CHAPTER II.

LAW MERCHANT.[1]

§ 8. Meaning of term.
9. Origin.
10. Origin of bill of exchange under law merchant.
11. Origin of promissory note under law merchant.
12. Law merchant codified.

§ 8. Meaning of term. The law merchant might be considered as a code of rules growing out of the needs of trade which the courts administering treated as distinct from the ordinary common law of England.

The law merchant in other words is a system of law which does not rest exclusively on the positive institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established, to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world.[2]

The law merchant is an example of how a custom or usage becomes gradually grafted into the law until it becomes as much a part of the system of law as any other principle in that system. It was first a mere particular usage which became general in its character and finally received the sanction of legal tribunals which recognized it as law.[3] We must understand that the law merchant was no part of the law of England for generations after it had followed trade, in a private capacity, to the British Islands. Unlike admiralty and equity, it was for centuries a sort of tolerated outlaw, living only as the merchants could keep it alive. The law merchant is not a modification of the common law, it occupies a field over which the common law does not and never did extend.

§ 9. Origin. The law merchant has gone through three stages in reaching the position it now holds in the legal tribunals. The first stage extended from the earliest times to the year 1606. Before this time the law merchant was considered as a special kind of law for a particular class of people. During this

[1] On Law Merchant see: Vanheath v. Turner, Winch 24; Goodwin v. Roberts, L. R. 10 Ex. 346. See also: The Elements of Mercantile Law by Thomas Edward Scrutton, Chapters I, II; Street on Foundations of Legal Liability; Smith's Mercantile Law, Introduction to 10th Ed.; Chalmers on Bills of Exchange, Preface; Lowndes on Marine Insurance; Scrutton on the Influence of the Roman Law on the Law of England, Chapter XIII, XIV.

[2] 3 Kent Com. 2.

[3] 6 Y. B. 13 Edw. IV, 9 Pl. 5.

period the business of the commercial world was transacted or conducted in the great fairs held at certain places at fixed times each year, to which merchant and trader came. At each fair there sat a Court to administer speedy justice, in accordance with the law merchant,[4] to the merchants and traders there assembled. When any doubt or dispute arose it was settled according to the custom among merchants as declared by the merchants present.

The second stage of the law merchant extends from the year 1606 when Lord Coke took office as Chief Justice of England until the year 1756 in which Lord Mansfield became Chief Justice. The most noticeable effect upon the law merchant during this period was the manner of its administration. The special court of the fairs died out and the law merchant was administered by the King's Court of Common Law. This court did not administer it as law but as a custom.[5] As this court only administered it as a custom the cases went to the jury without the facts and customs separated, in consequence of which very little was done in establishing any system of mercantile law in England during the period.

The third stage began with the year 1756 when Lord Mansfield became Chief Justice of the King's Bench and extends to the present time. The thirty years which Lord Mansfield sat as Chief Justice was the period in which a system of mercantile law was fully established in the common law courts. This system of law has been added to constantly by the addition of new usages of the mercantile world which have been proven to the Courts.

"Bills of Exchange at first extended only to merchant strangers trafficking with English merchants; and afterwards to inland bills between merchants trafficking the one with the other in England; and afterwards to all traders, and then to all persons whether traders or not; and there was then no need to allege any custom of merchants."[6]

Thus in its origin the law merchant distinguished the contracts of foreign merchants from the contracts of ordinary individuals, construing them not according to the tenets of the common law, but according to the usages of trade. This custom of regulating dealings between native and foreign merchants was extended to dealings between native merchants, but was confined to the persons of merchants, as apart from those pursuing other vocations. And it was not until 1666 that courts declared that "the law of merchants is the law of the land, and the custom is good enough generally for any man, without naming him merchant."

[4] Blackstone, Book III, page 32.
[5] Vanheath v. Turner, 1 Winch. 24 (1622).
[6] Brownich v. Lloyd, 2 Lutwyche's Rep. 1585.

§ 10. Origin of bill of exchange under law merchant. The bill of exchange is the earliest form of a negotiable instrument.[7] Bills of exchange, which were first used by the bankers and merchants of Florence and Venice to facilitate the transfer of credits between distant points, came to England through France early in the fourteenth century, that is, came from the continent of Europe where they formed part of the modern Roman or Civil law. The English merchant used it as an instrument whereby he avoided either sending money out of the country or bringing money into the country. To pay a third party he would give an order on one of his foreign debtors. Originally a bill of exchange was purely a trade transaction which was a means whereby one country avoided sending money to another.

§ 11. Origin of promissory note under law merchant. Promissory notes are said to be of great antiquity and to have been in use among the Romans; but the negotiability of these instruments was unknown among the Romans and is a development of modern times. The time of the introduction of promissory notes into England is not absolutely known but it appears to have been about thirty years before the reign of Queen Anne. They were in use a considerable time before they became the subject of litigation and legislation. The common-law judges were opposed to the negotiability of promissory notes payable to order or bearer[8] and it became necessary for Parliament to legislate upon the matter, the result of which was the enactment of a statute conferring upon promissory notes the same qualities of assignability and negotiability as were possessed by the inland bill of exchange.[9]

§ 12. Law merchant codified. In the seventeenth century the law of Bills of Exchange was codified in France, but in England no general codification took place until 1882 (when the English Bills of Exchange Act was enacted). In the United States the earliest general codification is found in the California Civil Code in 1872, but this has been followed within the last decade by a more widespread adoption of the Negotiable Instruments Law on the general lines of the English Bills of Exchange Act in most of the states of the Union. In some of the states, however, the unwritten law merchant, as incorporated into the English Common law, still governs although it has been modified in various ways by judicial construction and statute in the several states.[10]

[7] Mogodara v. Holt, 1 Show. 318.
[8] Buller v. Crips, 6 Mod. 30.
[9] Statute of 3 and 4 Anne, Chapter 9, §§ 1-3.
[10] See Introduction to Negotiable Instruments Law Annotated, in Appendix.

CHAPTER III.

NEGOTIABILITY.

§ 13. Meaning of term.
14. Origin of negotiability.
15. Distinction between assignability and negotiability.
§ 16. Purpose of negotiability.
17. Payment by negotiable instrument.

§ 13. Meaning of term. The term negotiability implies a transferable quality in the instrument to which it is applied. It is that quality of bills of exchange and promissory notes which renders them transferable from one person to another, and by possessing which they are emphatically termed negotiable paper.[1]

Negotiability in the law merchant is the property whereby a bill, note or check passes or may pass from hand to hand like money, so as to give the holder in due course the right to hold the instrument and collect the sum payable, for himself, free from defenses.

The Negotiable Instruments Law provides:

"An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery."[2]

"An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise."[2a]

§ 14. Origin of negotiability. Originally all instruments, including bills of exchange, promissory notes and bank checks were non-negotiable—in the sense that the maker could, when asked for payment, deduct from the amount due on the instrument any just claim that he had against the original owner. Such claim was termed a counter-claim, or set-off. In the revival of commerce in Italy, in the eleventh century, merchants

[1] Kinney's Law Dictionary; Odell v. Gray, 15 Mo. 337, 15 Am. Dec. 147; Shaw v. Merchants Nat. Bank, 101 U. S. 557; Anniston Loan & Trust Co. v. Steckney, 108 Ala. 146, 19 So. 63, 31 L. R. A. 234.

[2] Neg. Inst. Law, § 60 (30), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[2a] Neg. Inst. Law, § 77 (47), where all cases directly or indirectly bearing upon or citing the Law are grouped.

and traders, feeling the need of a commercial instrument, similar to a bank bill that could be used in barter and trade and commercial transactions, and realizing that no such instrument could be passed from hand to hand or sold readily, no matter how good the financial standing of the maker was, if he, the maker, could always insist on adjusting accounts with the original owner—adopted a custom later known as the law merchant, under which notes, checks, drafts, and bills of exchange, drawn in certain prescribed forms, and in the hands of a *bona fide* purchaser, could be enforced to their full extent against the maker, regardless of certain defenses or counter-claims that the maker might have against the original holder. Such instruments were negotiable and such was the origin of negotiability.[3]

In England, embarrassments arose in the application of the common law to these forms of contract and it was only after a long struggle that the courts engrafted upon the common law the law merchant, by which the parties to bills and notes were put upon a footing entirely different from that of parties to other contracts.[4]

The customs and usages of merchants as to negotiability of bills of exchange finally came to be recognized and enforced by the courts but were not put upon a firm basis until they received the sanction of parliament. Promissory notes were first recognized by the courts as negotiable and later they were refused that recognition.[5] Their negotiability was at last established in 1705 by a statute passed by parliament.[6] The principles of this statute have been followed in a general way by the various states of this country and embodied in statutes.

§ 15. Distinction between assignability and negotiability. Assignability is a more comprehensive term than negotiability. Assignability pertains to contracts in general while negotiability pertains to only a special class of contracts. Property, rights in property and other valuable rights evidenced by a contract are transferred by assignment.[7] The rights evidenced or created by ordinary contractual obligations are usually a kind of property, having in themselves a value measured in law by the damages assessable upon their breach. This property may at this stage of the law pass from person to person just as any other property

[3] For a complete discussion of this subject see Street on Foundations of Legal Liability.

[4] Buller v. Crips, 6 Mod. 29.

[5] Clerk v. Martin, 1 Salk. 129, 2 Ld. Raymond 757.

[6] Statute of 3 and 4 Anne, Chap. 9.

[7] Hoag v. Mendenhall, 19 Minn. 335; Andrews v. Nat. Bank of North Am., 7 Hun 20; Harlowe v. Hudgins, 84 Tex. 107, 19 S. W. 364, 31 Am. St. Rep. 21.

does. But there are well settled rules governing such transfer, which are the outgrowth and mingling of early doctrines of the courts of common law and of equity. The primitive view was that in contracts of this nature the assignee only could sue upon the contract. This was based upon the ground that the contract created a personal obligation between the creditor and debtor.[8] This doctrine has been greatly modified in the various states by statutes which declare that every action must be prosecuted by the real party in interest. Title to any property or rights in property cannot be completely passed, as to the debtor, by assignment without notice to him. The result of this rule is that if the debtor performs his contract to the original creditor without any notice of the assignment he is discharged.[9] These are not the rules as to negotiability. The person who takes an instrument by indorsement takes it free from all equities.[10] While a person who takes an instrument by assignment takes it subject to the equities incident to it.[11] This is the distinguishing feature between assignability and negotiability. Negotiability is applied to instruments which contain a promise to pay money. These instruments embodying a promise to pay money may be either negotiable or non-negotiable. In order to be negotiable under the law merchant they must contain some words indicative of negotiability.[12] The usual words employed to denote this quality are to "*A* or order," to "the order of *A*" or "to bearer."

Thus then the material difference between a non-negotiable instrument and a negotiable instrument is that the party to a non-negotiable instrument who has agreed to pay money or property under it, may when the money or consideration is demanded by a purchaser, set off against it any claims that he has against the original owner, which he could have set off if it had not been assigned—while the *bona fide* purchaser, before maturity, of a negotiable instrument can enforce it for its full amount against the maker, regardless of any counterclaim or other equities that the maker has against the original owner.

§ 16. Purpose of negotiability. The primary purpose of negotiability is to allow bills and notes the effect which money,

[8] Beecher v. Buckingham, 18 Conn. 110; McWilliam v. Webb, 32 Ia. 577; Halloran v. Whitcomb, 43 Vt. 306.

[9] Van Buskirk v. Insurance Co., 14 Conn. 141; Merchants' and Mechanics Bank v. Hewett, 3 Ia. 93; Richards v. Griggs, 16 Mo. 416.

[10] Everston v. Bank, 66 N. Y. 14; Wilson Sewing Mach. Co. v. Spears, 50 Mich. 534, 15 N. W. 894.

[11] Trustees of Union College v. Wheeler, 61 N. Y. 88; Warner v. Whittaker, 6 Mich. 133; Timms v. Shannon, 19 Md. 296.

[12] United States v. White, 2 Hill (N. Y.) 59, 37 Am. Dec. 374; Davega v. Moore, 3 McCord (S. C.) 482; Putnam v. Crymes, 1 McMull (S. C.) 9, 36 Am. Dec. 250.

in the form of government bills or notes supplies in the commercial world.[13] A man does not always have property or valuable property rights which he can turn into cash at any moment. These things, however, measure his credit, and he avails himself of this credit by executing his note to his debtor who in turn endorses this to a third person. These men in this way without cash in hand are enabled by means of credit to conduct and carry to completion business and commercial enterprises. The sole purpose of negotiability then is to allow men of undoubted credit to carry on a business enterprise upon their promissory notes knowing that other business men will treat these promises as cash. Furthermore the purpose of negotiability is to allow bills and notes to go from hand to hand in the commercial markets and to take the part of money in commercial transactions.

§ 17. Payment by negotiable instrument. In the absence of an agreement, either express or implied, a negotiable instrument is not an absolute and unconditional payment of the debt and a discharge of the original obligation. Thus it has been held that the debtor's own note given for a precedent or contemporary debt is conditional payment.[14]

If, however, a new note is given in renewal of a former note and for a less amount it will be considered as a satisfaction of the prior note as all differences are presumed to have been adjusted when the new note was given.[15]

Nor is a new note executed by only a part of the original promisors generally to be considered as payment of the prior note in the absence of any agreement to that effect.[16]

In case the bill or note of a third person is given in payment of a precedent debt the payment is generally held to be conditional.[17]

But when the stranger's note is payable to bearer or has been

[13] Friedlander v. Railway Co., 130 U. S. 416.

[14] Winsted Bank v. Webb, 39 N. Y. 325, 10 Am. Dec. 435; Nightingale v. Chaffee, 11 R. I. 609, 23 Am. Rep. 531; Sheehy v. Mandeville, 6 Cranch 258.

Contra, Ward v. Bourne, 56 Me. 61; Smith v. Bettger, 68 Ind. 254, 34 Am. Rep. 256.

[15] Piper v. Wade, 57 Ga. 223; Bolt v. Dawkins, 16 S. C. 198; Draper v. Hitt, 43 Vt. 439, 5 Am. Rep. 292.

But see, Jenness v. Lane, 26 Me. 475.

[16] Hill v. Sleeper, 58 Ind. 221; Bates v. Rosekrans, 37 N. Y. 409; Boston Nat. Bank v. Jose, 10 Wash. 185, 38 Pac. 1026.

But see, Stanley v. McElrath, 86 Cal. 449, 25 Pac. 16, 10 L. R. A. 545; Bansman v. Credit Guarantee Co., 47 Minn. 377, 50 N. W. 496.

[17] Gresham v. Morrow, 40 Ga. 487; Woods v. Woods, 127 Mass. 141; Gibson v. Tobey, 46 N. Y. 637, 7 Am. Rep. 397.

But see, Dennis v. Williams, 40 Ala. 633.

indorsed in blank by a prior holder so that it may be transferred without indorsement it is then considered as absolute payment when given for a contemporaneous debt.[18]

But it is only as conditional payment when payable to order and can be transferred only by indorsement.[19]

A note is not discharged by giving a new note which proves invalid.[20] Thus the original note is not discharged even though it is surrendered and a new note is accepted in payment without knowledge that the new note is a forgery.[21]

It is not necessary that the old note be surrendered or canceled before a new note can operate as payment. [22]

[18] Tobey v. Barber, 5 Johns. 68, 4 Am. Dec. 326; Day v. Kinney, 131 Mass. 37; Susquehanna Fert. Co. v. White, 66 Md. 444, 7 Atl. 802.

But see, Huse v. McDaniel, 33 Ia. 406, 4 Am. Rep. 244.

[19] Monroe v. Hoff, 5 Denio 360; Shriner v. Keller, 25 Pa. St. 61.

See Day v. Thompson, 64 Ala. 269.

[20] Williams v. Gilchrist, 11 N. H. 535; Winsted Bank v. Webb, 46 Barb. 177; Edgell v. Stanford, 6 Vt. 551.

[21] Athens First Nat. Bank v. Buchanan, 87 Tenn. 32, 9 S. W. 202, 10 Am. St. Rep. 617, 12 L. R. A. 199; West Phila. Nat. Bank v. Field, 143 Pa. St. 473, 22 Atl. 829, 24 Am. St. Rep. 562.

[22] French v. French, 84 Ia. 655, 57 N. W. 145, 15 L. R. A. 30; Dixon v. Dixon, 31 Vt. 450, 76 Am. Dec. 129; East River Bank v. Butterworth, 45 Barb. 476.

CHAPTER IV.

GENERAL DOCTRINE.

§ 18. Negotiable instruments similar to money.
19. Bona fide holder.
§ 20. Equities.
21. Circulation when parties not immediate.

§ 18. Negotiable instruments similar to money. As has already been pointed out the peculiarities which attach to negotiable paper are the growth of time, and were acceded to for the benefit of trade. While all choses in action are now transferable, the negotiable instrument is the only species which carries, by transfer, a clear title and a full measure; and like an instrument under seal, imports a consideration. Negotiable instruments are thus given many of the peculiarities of money—i. e., gold and silver coin and bank bills.[1]

§ 19. Bona fide holder. In order to take advantage of the special privileges attached to a negotiable instrument, the holder must have taken it before it was due,[2] and with no notice of any irregularity in the instrument, or of any valid defenses that the maker had to it,[3] and the owner must have parted with something of value in acquiring it.[4] The consideration need not have been money.[5] It may have been property,[6] the granting of credit,[7] or some disadvantage which the holder assumed in acquiring it. Such a holder is a *bona fide* holder. He is often spoken of as a holder in due course, also, as a *bona fide* purchaser for value without notice.

§ 20. Equities. A makes a certain instrument payable to B, promising to pay him a certain amount of money. That instrument is valid regardless of whether or not it is negotiable by the law merchant. B can recover from A, providing, of course, there

[1] Friedlander v. Railway Co., 130 U. S. 416; Russel v. Whipple, 2 Cow (N. Y.) 536; Durgin v. Bartol, 64 Me. 473.

[2] Lansing v. Gaine, 2 Johns. (N. Y.) 300, 3 Am. Dec. 422; Lancaster Bank v. Woodard, 18 Pa. St. 357, 57 Am. Dec. 618; Gordon v. Wansey, 21 Col. 77.

[3] Ward v. Doane, 77 Mich. 328, 43 N. W. 980; Greneaux v. Wheeler, 6 Tex. 515; Smith v. Florida Cent. Ry. Co., 43 Fed. 731; Canajoharie Nat. Bank v. Diefendorf, 123 N. Y. 191, 25 N. E. 402, 10 L. R. A. 676.

[4] Webster v. Cobb, 17 Ill. 459; Tillow v. Britton, 9 N. J. L. 120; Kinkel v. Harper, 7 Colo. App. 45, 42 Pac. 173.

[5] In re Great Western Tel. Co., 5 Biss. (U. S.) 363, 10 Fed. Cas. No. 5,740; Mayer v. Heidelbach, 123 N. Y. 332, 25 N. E. 416, 9 L. R. A. 850; Greenwood v. Lowe, 7 La. Ann. 197.

[6] Pond v. Waterloo Agricultural Works, 50 Ia. 596.

[7] Drulling v. Battle Creek First

has been a consideration, and if B assigns that over to some one else, that other person can recover also from A. The instrument is valid, then, whether it is negotiable by the law merchant or not. The question as to whether or not it is negotiable by the law merchant becomes important when there are some equities which attach to the instrument, and then, if it is not negotiable by the law merchant, the person takes it subject to those equities; it has certain luggage attached to it which the person who gets the instrument must also take—he must take the luggage with the instrument. Therefore, it is important to know whether or not an instrument is negotiable by the law merchant. Instruments which have this luggage attached to them are binding, but we are considering now whether these instruments are negotiable by the law merchant for other reasons.

In general it may be here stated that there are certain essentials which an instrument negotiable by the law merchant must have. The bill must contain an order, not merely a request.[8] A orders you to do so and so; he does not merely request you to do it. A note must contain a promise.[9] A promises to do. The order or promise must be unconditional; absolutely for the payment of money alone.[10] Thus an order for 50 bushels of wheat or corn is not sufficient because not payable in money. There must be a payment in money and nothing else attached to it. The amount of money must be certain;[11] the time of payment must be a time certain to arrive,[12] and the instrument must be specific as to all its parties. In a promissory note it must be specific as to all its parties, that is, it must be specific as to the maker and the payee. In a bill of exchange the drawer, drawee and payee must be specific.

Now, the question, whether an instrument has all these requisites which are required by the law merchant in order to be negotiable, becomes important when the instrument is in the hands of a *bona fide* purchaser for value. A person who gets a note with equities attached to it, and gives value for it, gets that instrument free from all those equities if it is negotiable by the law merchant. For instance, suppose a note has been obtained from A

Nat. Bank, 43 Kan. 197, 23 Pac. 94, 19 Am. St. Rep. 126.

[8] Gillilan v. Myers, 31 Ill. 525; Knowlton v. Cooley, 102 Mass. 233.

[9] Smith v. Bridges, 1 Ill. 18; Hatch v. Gillettee, 8 N. Y. App. Div. 605, 40 N. Y. S. 221.

[10] South Bend Iron Works v. Paddock, 37 Kan. 510, 15 Pac. 574; Wainwright v. Straw, 15 Vt. 215, 40 Am. Dec. 675.

[11] Neg. Inst. Law, § 21 (2); Hatch v. Dexter First Nat. Bank, 94 Me. 348, 47 Atl. 908, 80 Am. St. Rep. 401.

[12] Hanel v. Marston, 7 Rob. (Ia.) 34; New Windsor First Nat. Bank v. Brynum, 84 N. C. 24, 37 Am.

by fraud; he thinks he has been signing a receipt when in fact he was signing a negotiable promissory note, and he has been negligent in signing; it gets into the hands of X, and X transfers it to Y. Y can recover against A. That equity does not run against a *bona fide* holder for value.[13] Suppose it has some of these essentials lacking in order to make it negotiable. In that case X, Y, or the person who holds the instrument for value, would take it subject to the equity that the note was obtained from A by fraud. If it was not negotiable by the law merchant, A would have a right to take advantage of that equity.

There are some things which even a *bona fide* holder for value without notice can not maintain suit against. Suppose some one forges A's name to a note; now, the good reason of the law merchant and merchants generally would hold that that should not be held as valid against A, even in the hands of a *bona fide* purchaser for value without notice. A is not a party to it, and we shall find out later that that is a real defense; and any person holding that instrument and trying to recover against A, A would have the right to set up against him that it was a forgery, even though it was negotiable by the law merchant and even though the person holding it is a holder for value without notice.[14]

Thus we see there is one fact and principle that we must bear in mind all the time, and that is, if a person makes an agreement or contract of any nature, and it is such a contract as would be binding in the law of contracts, then that contract is binding as between those parties. So, if a person makes a contract or a written instrument of any nature, whether or not that instrument is negotiable by the law merchant, he is bound if he would be bound by the law of contracts. If one attempts to make a promissory note or a bill of exchange but does not do it and makes some other paper, he is bound just the same. We must consider the difference. The law of contracts, we might say, controls always as between the immediate parties. The law of bills and notes becomes important when we consider the paper in the hands of an innocent holder for value.

§ 21. **Circulation when parties not immediate.** As between the immediate parties, for example, the drawer and payee on a promissory note, circulation has not begun, but when it circulates in other hands, then it partakes of the nature of money and

Rep. 604; Neg. Inst. Law, § 20 (1); Bills Exch. Act. §§ 3, 83.

[13] Von Windisch v. Klaus, 46 Conn. 433; Strough v. Gear, 48 Ind. 100.

[14] Foltier v. Schroder, 19 La. Ann. 17, 92 Am. Dec. 521; Roach v. Woodall, 91 Tenn. 206, 18 S. W. 407, 30 Am. St. Rep. 883.

will circulate just as money does, providing it is negotiable by the law merchant.[15] Suppose X promises to pay A $50 and to deliver him 50 bushels of wheat. Now, in the absence of any fraud or anything of that nature, that is absolutely binding as between them, and B can recover from A $50 and 50 bushels of wheat. Now, suppose that is assigned by B to C and by C to D. Now, that is a case where there is a valid contract. Any party to the instrument can proceed upon it and can recover. Now, suppose this instrument has been procured by fraud; that A believes he is making a receipt for 50 bushels of wheat to B and, as a matter of fact, he promises to pay him $50 and deliver him 50 bushels of wheat, but he is negligent and careless and as a result it turns out to be some other instrument. Well, of course, between A and B, B could not recover, but suppose B gets it and indorses it to C and C to D. Can D recover upon that instrument? No. That is an instrument that would be *non-negotiable* by the law merchant and D could not recover on it; there were certain equities that went with it, and A can set the equities up against anyone who gets that instrument. So, when it gets in the hands of anybody else, A has a right to set up that defense.[16] Now, suppose it is *negotiable* by the law merchant, the promise is to pay $50 alone, but suppose the instrument has been procured by fraud from A by B instead of being a receipt it is a promissory note and A thinks he is signing a receipt, and the circumstances are like the others. In that case B could not recover against A, although it has all the requisites of a negotiable instrument. As between the immediate parties the ordinary law of contracts would apply and the fraud could be set up.[17] But let us suppose that it is endorsed by B to C and by C to D. D has no notice of any equity and gives full value for it, and he endeavors to recover against A. A cannot set up fraud as a defense because it is an instrument negotiable by the law merchant and in the hands of a *bona fide* holder for value without notice. A cannot set up that defense. Now, if D knew that that had been procured by fraud he could not collect. If a person gets a negotiable instrument and he has given value and has no notice of wrongdoing, good common sense would say that he could recover just like he had gotten a ten dollar bill. That is the general doctrine underlying the law of negotiable instruments.[18]

[15] *Supra*, § 18 note 1.

[16] Trustees of Union College v. Wheeler, 6 N. Y. 88; Timms v. Shannon, 19 Md. 296.

[17] Lancaster Nat. Bank v. Mackey, 5 Kan. App. 437, 49 Pac. 324; Turley v. Bartlett, 10 Heisk. (Tenn.) 221; Kulenkamp v. Groff, 7 Mich. 675, 40 N. W. 57.

[18] *Supra*, § 18 note 1.

CHAPTER V.

PARTIES AND THEIR CAPACITY.

§ 22. Parties and their capacity—In general.
23. Parties partially or wholly incapacitated—In general.
24. Same—Persons lacking mental capacity—Infants.
25. Same—Persons lacking mental capacity—Lunatics.
26. Same—Persons lacking mental capacity — Drunkards and spendthrifts.
27. Same—Persons lacking legal capacity other than mental —Married women.
28. Same—Persons lacking legal capacity other than mental —The bankrupt or insolvent payee.
29. Same—Persons lacking legal capacity other than mental —Alien enemies.
30. Parties not incapacitated—In general.
§ 31. Same—Persons acting in fiduciary capacity—Executors and administrators.
32. Same—Persons acting in fiduciary capacity — Trustees and guardians.
33. Same—Persons acting in representative capacity—Agent.
34. Same—Persons acting in representative capacity—Partners.
35. Same—Persons acting in representative capacity—Private corporations.
36. Same—Persons acting in representative capacity—Municipal or public corporations.
37. Same—Persons acting in representative capacity—Public officers.

§ 22. Parties and their capacity—In general. In this chapter we shall consider parties to bills, notes and checks and the capacity of such parties. It may be stated that the general rules governing contracts will apply as to the capacity of persons to make and indorse bills, notes and checks,[1] and also as to the effect of the various forms of legal disability, as infancy, insanity, coverture and alien enmity, upon the rights of the parties. Paper executed by persons who are under any of the above disabilities, is either void or voidable. Others, as partnerships, corporations, and agents, who have capacity to make simple contracts also have capacity, to certain extent, to execute and transfer bills, notes and checks. We shall consider in turn the capacity of all these parties to execute negotiable instruments, or bills, notes and checks.

[1] Bromwich v. Loyd, Lutw. 1582; Hodges v. Steward, 12 Mod. 36; Sarsfield v. Witherley, 2 Vent. 292.

For convenience, parties and their capacity may be considered under two main divisions or heads, viz., 1st—those parties partially or wholly incapacitated, and, 2nd—those parties not incapacitated.

§ 23. Parties partially or wholly incapacitated—In general. Parties partially or wholly incapacitated may be classified either as parties lacking mental capacity, such as infants, lunatics, drunkards and spendthrifts; or as persons lacking legal capacity other than mental, such as married women, the bankrupt or insolvent payee and alien enemies.

§ 24. Same—Persons lacking mental capacity—Infants. There is a difference of opinion in the decisions of the various states as to whether a negotiable instrument made, accepted or indorsed by an infant, that is, by one under twenty-one years of age, is absolutely void or is merely voidable.[2] The better opinion is that such note is voidable and may be ratified by the minor after reaching his majority.[3] But before reaching his majority and ratifying the instrument the infant cannot bind himself absolutely as drawer, indorser, acceptor or maker of a bill of exchange or promissory note.[4]

If an instrument is given by an infant for necessaries, the better opinion is that the instrument is voidable and if repudiated by the infant,[5] he may be recovered against not on the note but for the value of the articles supplied, or service rendered, actions known technically as *"quantum valebat"* and *"quantum meruit,"* respectively.[6]

A note, bill or check made payable to an infant is enforceable by the infant against the maker or acceptor, as the privilege of avoiding the contract lies with the infant and is for his benefit.[7]

[2] Tyler v. Gallop, 68 Mich. 185, 35 N. W. 902, 13 Am. St. Rep. 336; Little v. Duncan, 9 Rich. (S. C.) 55, 64 Am. Dec. 700; Askey v. Williams, 74 Tex. 294, 11 S. W. 1101, 5 L. R. A. 176. See note 18 Am. St. Rep. 606–611.

Contra, Wentworth v. Wentworth, 5 N. H. 410; McMim v. Richards, 6 Yerg. (Tenn.) 9.

[3] Heady v. Boden, 4 Ind. App. 475, 30 N. E. 1119; Whitney v. Dutch, 14 Mass. 457, 7 Am. Dec. 229; Minock v. Shortridge, 21 Mich. 304.

[4] Fetrow v. Wiseman, 40 Ind. 148; Minock v. Shortridge, 21 Mich. 304; Little v. Duncan, 9 Rich. 55, 64 Am. Dec. 700; Stern v. Meikleham, 56 Hun (N. Y.) 475, 10 N. Y. S. 216.

[5] Morton v. Steward, 5 Ill. App. 533; McCrillis v. How, 3 N. H. 348; Swasey v. Vanderheyden, 10 Johns. (N. Y.) 33.

But see, Earle v. Reed, 10 Metc. (Mass.) 387; Aaron v. Harley, 6 Rich. (S. C.) 26; Bradley v. Pratt, 23 Vt. 378.

[6] Guthrie v. Morris, 22 Ark. 411; Munson v. Washband, 31 Conn. 303, 83 Am. Dec. 151; Askey v. Williams, 74 Tex. 294, 11 S. W. 1101, 5 L. R. A. 176.

[7] Garner v. Cook, 30 Ind. 331; Dulty v. Brownfield, 1 Pa. St. 497;

The one who pays should use due care in paying lest payment should be made to the guardian rather than to the infant.

An infant's indorsement, that is, his writing his name on the back and making the instrument payable to some one else, is voidable, not absolutely void. He may choose to disaffirm it, and by returning the consideration received, compel the maker or acceptor to pay him, although the money has already been paid to the indorsee or the one to whom the infant indorses it; or the infant may disaffirm the indorsement, notify all the parties, and if payment has not been made to the indorsee, destroy his title to the bill or note.[8]

In case of the indorsement of the note or bill by the infant payee, the maker or acceptor is liable, as the fact that they make the instrument payable to an infant estops or precludes them from denying his capacity to indorse the instrument. It would be absurd to allow one who has made an instrument payable to an infant, or his order, to refuse to pay the money to one to whom the infant had ordered it to be paid, in distinct violation of his promise.[9]

The Negotiable Instruments Law provides:[10]

"The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon."

As the instrument of an infant is not absolutely void, but voidable only at his election, it follows that, after reaching full age, the then adult may ratify and confirm his bill or note executed while he was an infant. Unless a written ratification is required by statute, a verbal ratification is sufficient. In some states by statute it is required that this ratification be in writing.

§ 25. **Same—Persons lacking mental capacity—Lunatics and imbeciles.** The bill or note of a lunatic, imbecile, idiot, or other persons *non compos mentis,* from age or personal infirmity, is not binding on such persons during the period of incompetency.[11]

Grey v. Cooper, 3 Dougl. 65; Bunker's Cases, 331.

[8] Hardy v. Waters, 38 Me. 450; Nightingale v. Withington, 15 Mass. 272, 8 Am. Dec. 101; Story Prom. Notes, § 80.

[9] Frazier v. Massey, 14 Ind. 382; Hardy v. Waters, 38 Me. 450; Nightingale v. Withington, 15 Mass. 272, 8 Am. Dec. 101.

[10] Neg. Inst. Law, § 41 (22), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[11] 15 Am. Dec. 361 note; Musselman v. Cravens, 47 Ind. 1; Ellars v. Mossbarger, 9 Ill. App. 122; Hale v. Browne, 11 Ala. 87; Milligan v. Pollard, 112 Ala. 465, 20 So. 620;

There is a conflict of authority in the various jurisdictions as to whether one ignorant of the incompetency of a person with whom he contracts will be protected. The better opinion would seem to be that he will be protected if he has acted in good faith and taken no undue advantage of the afflicted person.[12]

That is, he will be protected if the note was obtained or the contract entered into in good faith, in ignorance of the want of capacity of the insane person to contract, and for a full and adequate consideration of money paid, or property delivered to him.

As to whether a bill or note given for necessaries binds one under such incompetency, the more just rule would seem to be to place such an instrument upon the same footing as the bill or note of an infant given for necessaries, as discussed in the previous section.[13]

Contracts with a person who has been adjudged judicially to be insane and for whom a committee or guardian has been appointed to care for his interests are not valid and cannot be enforced if disaffirmed or avoided. If the insanity of a party to a contract is known, the contract is absolutely void.[14]

Such persons of unsound mind may be payees of bills or notes and may compel payment to them or a return of the consideration. As payees they may indorse the paper and the indorsee may recover of the maker or acceptor, and the latter are estopped

Burke v. Allen, 29 N. H. 106, 61 Am. Dec. 642; Carrier v. Sears, 4 Allen (Mass.) 336, 81 Am. Dec. 707; American Trust Co. v. Boone, 102 Ga. 202, 29 S. E. 182, 66 Am. St. Rep. 167, 40 L. R. A. 250. See note 11 Am. St. Rep. 320.

[12] Memphis Nat. Bank v. Sneed, 97 Tenn. 120, 36 S. W. 716, 56 Am. St. Rep. 788, 34 L. R. A. 274; Snyder v. Lanback, 7 Wkly. Notes Cases (Pa.) 464 note; Mussleman v. Cravens, 47 Ind. 1; Hosler v. Beard, 54 Ohio St. Rep. 398, 43 N. E. 1040, 56 Am. St. Rep. 720, 35 L. R. A. 161.

Contra, American Trust Co. v. Boone, 102 Ga. 202, 29 S. E. 182, 66 Am. St. Rep. 167, 40 L. R. A. 250; Seaver v. Phelps, 11 Pick. 304, 22 Am. Dec. 372.

[13] Navasota First Nat. Bank v. McGinty, 29 Tex. Civ. App. 539, 69 S. W. 495; In re Renz, 79 Mich. 216, 44 N. W. 598; Hosler v. Beard, 54 Ohio St. Rep. 398, 43 N. E. 1040, 56 Am. St. Rep. 720, 35 L. R. A. 161.

Contra, Milligan v. Pollard, 112 Ala. 465, 20 So. 620; Davis v. Tarver, 65 Ala. 98; McKee v. Purnell, 18 Ky. L. Rep. 879, 38 S. W. 705.

[14] American Trust, etc., Co. v. Boone, 102 Ga. 202, 29 S. E. 182, 66 Am. St. Rep. 167, 40 L. R. A. 250; Hughes v. Jones, 116 N. Y. 67, 22 N. E. 446, 15 Am. St. Rep. 386, 5 L. R. A. 637; Schramek v. Shepeck, 120 Wis. 643, 98 N. W. 213; Coleman v. Farar, 112 Mo. 54, 20 S. W. 441.

But see, Kimball v. Bumgardner, 16 Ohio Cir. Ct. 587, 9 Ohio Civ. Dec. 409.

from denying the payee's capacity to indorse if the payee was incompetent when the bill or note was executed.[15]

It has been held, that the insanity of the indorser may be pleaded by the maker of a note in an action brought against him by the indorsee.[16] But the better doctrine is as above stated that the contract of indorsement by an insane person is voidable and not void, and such contract is binding upon all prior parties to the instrument who are of sound mind.[17] No action will lie on an accommodation indorsement of a promissory note by a lunatic, even in favor of an innocent holder.[18]

There is a presumption that every person is of sound mind and capable in that respect of contracting a liability on a bill, note or check until the contrary appears.[19] If a person contracts such a liability with a third person whom he knows to be insane, it is not valid, for unsoundness of mind would be a good defense, if it could be shown that the defendant was not of capacity and the plaintiff knew it.[20] But where a person as above in good faith contracts with another, without notice of any such insanity as affects his capacity to contract, the ordinary presumption of sanity prevails, and the contract is valid, unless undue advantage was taken of the lunatic.[21]

§ 26. Same—Persons lacking mental capacity—Drunkards and spendthrifts. If a person became so drunk as to be deprived of understanding and reason and in such a condition signs a bill or note, either as maker, drawer, indorser or acceptor, the instrument as to him is voidable.[22] He may ratify the instrument when he becomes sober and be bound by it.[23] Many courts

[15] Carrier v. Sears, 4 Allen (Mass.) 336, 81 Am. Dec. 707.

[16] Walker v. Winn (Ala. 1905), 39 So. 12; Burke v. Allen, 29 N. H. 106, 61 Am. Dec. 642.

[17] Carrier v. Sears, 4 Allen (Mass.) 336, 81 Am. Dec. 707.

[18] Van Patton v. Beal, 46 Ia. 62; Edwards v. Davenport, 20 Fed. 756; Smith v. Mirsack, 6 C. B. 486.

But see, Memphis Nat. Bank v. Sneed, 97 Tenn. 120, 36 S. W. 716, 56 Am. St. Rep. 788, 34 L. R. A. 274; Bechtel's Appeal, 133 Pa. St. 367, 19 Atl. 412.

[19] Jackson v. Van Dusen, 5 Johns. 144; 1 Parsons on Notes and Bills 150.

[20] Hannahs v. Sheldon, 20 Mich. 278; Lincoln v. Buckmaster, 32 Vt. 652; Hughes v. Jones, 116 N. Y. 67, 22 N. E. 446, 15 Am. St. Rep. 386, 5 L. R. A. 637.

[21] Mutual Life Ins. Co. v. Hunt, 79 N. Y. 541; Hosler v. Beard, 54 Ohio St. Rep. 398, 43 N. E. 1040, 56 Am. St. Rep. 720, 35 L. R. A. 161; Behrens v. McKenzie, 23 Ia. 343.

[22] Jenners v. Howard, 6 Blkfd. 240; Conant v. Jackson, 16 Vt. 335; Miller v. Finley, 26 Mich. 249; Gore v. Gibson, 13 Mees & W. 623; State Bank v. McCoy, 69 Pa. St. 204. See note 107 Am. St. Rep. 545.

[23] Calkins v. Fry, 35 Conn. 170; Joest v. Williams, 42 Ind. 565; Mathews v. Baxter, L. R. 8 Exch. 132.

But see, Berkley v. Canon, 4 Rich. 136.

hold that drunkenness, unless procured by the payee's connivance, must be habitual and amount practically to mental unsoundness in order that it may be set up as a defense on an instrument.[24] The spendthrift, as in cases of infancy, lunacy, or drunkenness, may be placed under the care of a guardian.[25] A person who has been deprived of his property for any of the above causes is considered incompetent to make a negotiable instrument. So likewise a spendthrift when placed under the care of a guardian is held to be incompetent to make a negotiable instrument. By the weight of authority when under the care of a guardian he cannot indorse a note made payable to himself, for if he is held to be incompetent to make a negotiable instrument in the first instance he could not consistently be held to incur any liability by indorsement.[26]

§ 27. Same—Persons lacking legal capacity other than mental—Married women. Wherever the common law prevails, a married woman cannot bind herself as a party in any way to a bill or note and such instruments signed by her are absolutely void. There were a few exceptions to this, however, at common law, as where the husband was an alien enemy and the like. In those states where the common law has been unchanged by legislative enactment the common law rules still prevail; if a special or limited power to contract is given them, they are still deemed *prima facie* unable to contract, and the burden is on the persons relying on the validity of their contracts to bring them within the rule set down in the legislative enactment.[27]

Modern statutes in most of the states enlarge the capacity of a married woman as to the making of contracts. The general scope of this remedial legislation is either to give her power to contract the same as if single or contract as if single with reference to or for the benefit of her separate estate and in either case her power to execute negotiable instruments would be the same as in case of other contracts. In some states she is forbidden to execute such instruments as surety and her engagements as surety are absolutely void and cannot be ratified by her after coverture is terminated, either by death or divorce.[28]

[24] State Bank v. McCoy, 69 Pa. St. 204, 8 Am. Rep. 246; Hale v. Brown, 11 Ala. 87; Smith v. Williamson, 8 Utah 219.

[25] Manson v. Felton, 13 Pick. 206; Lynch v. Dodge, 130 Mass. 458.

[26] Lynch v. Dodge, 130 Mass. 458.

[27] Kenworthy v. Sawyer, 125 Mass. 28; Kenton Ins. Co. v. McClelland, 43 Mich. 564; Cornings v. Leedy, 114 Mo. 454, 21 S. W. 804; Connor v. Martin, 1 Strange, 516. See note 3 L. R. A. (N. S.) 145.

[28] The law of the place determines the capacity of married women to enter into contracts.

§ 28. **Same—Persons lacking legal capacity other than mental—Bankrupt or insolvent payee.** A bankrupt cannot indorse a bill or note, since all his bills and notes receivable are collectible only by the assignee or trustee in bankruptcy. Any indorsements which he attempts to make are absolutely void. The one exception to the above rule is that when the bankrupt shall have sold the paper before his bankruptcy, the title obtained by the purchaser will be superior to that of the assignee or trustee although the indorsement was made after the bankruptcy.[29]

§ 29. **Same—Persons lacking legal capacity other than mental—Alien enemies.** In times of peace aliens may contract with each other as other persons may but in times of war alien enemies cannot contract with each other when it necessitates communication across the line of hostilities; hence they cannot execute negotiable paper which is binding either during or after the close of hostilities. Alien enemies are those who are subjects of different sovereignties which are at war with each other. In some cases, war simply suspends the contractual powers of aliens and does not terminate them. But in no case will communications or transfers of property or money across the line of hostilities be permitted.[30]

§ 30. **Parties not incapacitated—In general.** Parties not incapacitated may be classified as, 1st, those acting in a fiduciary capacity, such as executors, administrators, trustees, guardians, committees, and the like; 2nd, those acting in a representative capacity as agents, partners, private corporations, municipal or public corporations and public officers.

§ 31. **Same—Persons acting in fiduciary capacity—Executors and administrators.** In general, the legal representatives of decedents, known as executors and administrators succeed to all the interests and rights of such decedents. The rights and remedies attaching to all their contracts and instruments, whether negotiable or not, pass to the executors and administrators. The assets of the decedent's estate also pass to these legal representa-

Bell v. Packard, 69 Me. 105, 31 Am. Rep. 251; Bowles v. Field, 83 Fed. 886; Robinson v. Queen, 87 Tenn. 445, 11 S. W. 38, 10 Am. St. Rep. 690, 3 L. R. A. 214.

But in La., and generally under the civil law, the wife's domicile determines her capacity. Garnier v. Poydras, 13 La. 177.

[29] Hersey v. Elliot, 67 Me. 526, 24 Am. Rep. 50; Hughes v. Nelson, 28 N. J. Eq. (2 Stew.) 547; First Nat. Bank v. Gish, 72 Pa. St. 13; Jerome v. McCarter, 94 U. S. 734.

[30] Woods v. Wilder, 43 N. Y. 164, 3 Am. Rep. 684; Craft v. U. S., 12 Ct. Cl. 178; Billgerry v. Branch, 19 Gratt. (Va.) 393, 100 Am. Dec. 679; Ledoux v. Buhler, 21 La. Ann. 130; Russell v. Russell, 1 MacArthur (D. C.) 263.

As to transfer in this country of a note by an alien enemy, see Morris v. Poillon, 50 Ala. 403; Morrison v. Lovell, 4 W. Va. 346.

tives. But these rules are subject to the exception that all those rights and obligations arising from the decedent's contracts which are so personal in their character that no one could take his place in the matter, do not pass to his executors or administrators.

An executor or administrator cannot make or indorse a promissory note so as to bind the estate of the decedent. By his contract he can only bind himself and he can in no way bind the estate under his control except as to the debts contracted by the decedent himself. In case he should make a promissory note or accept a bill of exchange and it should be negotiated before due, the executor has created a personal liability.

The fact that the executor in making the instrument describes himself as executor does not give him capacity to bind the estate.[31] In case a promissory note or bill of exchange which is made payable to the deceased or his order comes into the hands of the executor or administrator there is a conflict of authority as to whether either of them may indorse in such a manner as to preclude a personal liability.[32] In case the note has been indorsed by the payee before his death it is necessary that the note be again indorsed in order to pass title.

§ 32. Same—Persons acting in fiduciary capacity—Trustees and guardians. Trustees and guardians have capacity to transfer instruments but they can incur only a personal liability. An estate is committed to them and they have capacity to hold it and keep it intact, not for themselves but for others. They have such powers as are necessary for them to exercise in carrying into force and effect the estate which they control. If a trustee or guardian executes a bill or note and describes himself as such he does not bind the estate but incurs only a personal liability.[33]

[31] Rittenhouse v. Ammerman, 64 Mo. 197, 27 Am. Rep. 215; Funkerburk v. Gorham, 46 Ga. 296; Walker v. Patterson, 36 Me. 273; Gregory v. Leigh, 33 Tex. 813; Sneed v. Coleman, 7 Gratt. 300.

As to liability of administrator or executor as acceptor of bill drawn against him as such, see Tassey v. Church, 4 Watts & S. 141, 39 Am. Dec. 65.

But see, Schmiltler v. Simon, 114 N. Y. 176, 21 N. E. 162.

[32] Wooley v. Lyon, 117 Ill. 244, 6 N. E. 867, 57 Am. Rep. 867; Wade v. Wade, 36 Tex. 529; Campbell v. Brown, 64 Ia. 425, 20 N. W. 745, 52 Am. Rep. 446; Bogert v. Hertell, 40 Hill 492.

But see, Smith v. Whiting, 9 Mass. 334; Sanders v. Blain, 6 J. J. Marsh 446, 22 Am. Dec. 86.

Must indorse without recourse. Foster v. Fuller, 6 Mass. 58; Livingston v. Gaussen, 21 La. Ann. 286, 99 Am. Dec. 731.

As to power of a foreign executor to transfer bill see, Dial v. Gary, 14 S. C. 573, 37 Am. Rep. 737; Stearns v. Burnham, 5 Me. 261, 17 Am. Dec. 228.

[33] Towne v. Rice, 122 Mass. 67; McGavock v. Whitfield, 45 Miss. 452; Shiff v. Shiff, 20 La. Ann.

Trustees and guardians, like executors and administrators, cannot bind the estate under their control, or the persons for whom or for whose benefit they act, by their promissory note, or by the acceptance of a bill of exchange; to give any validity to such a note or bill they must be deemed personally bound as makers or acceptors.

It has been held that a guardian may indorse a note or bill of exchange payable to his order as guardian so as to pass title, the reasoning being upon the theory that the words "as guardian" are merely descriptive of the payee.[34] But the better doctrine seems to be that if the indorsee takes such an instrument, the words "as guardian" should be sufficient to put him on his guard and if the transfer was in fraud of the trust the indorsee should be held personally liable.[35]

§ 33. Same—Persons acting in representative capacity—Agent. All persons who are themselves competent to become parties to a negotiable contract, in their own individual right, can do so through the instrumentality of an agent.[36] It is not necessary that the agent himself should be competent to make a contract, as he is the mere instrument of the contracting party, who, of course, must be capable.[37]

The best mode for an agent to sign or indorse a bill or note for his principal, so that it may clearly appear that he is the mere scribe, as it were, who writes for another, is as follows: "X, by his attorney or agent, Y;" or, "X, by Y, agent;" or, "Y, for X;" or, "Y, agent for X." It is held competent also for the agent to sign simply the principal's name, and to show his authority to do so by other evidence.[38] If the agent sign a note with his own name, and discloses no principal, he is personally bound. And though he write "agent" after his name, he is still bound personally unless the name of the principal can be found within the four corners of the instrument.[39]

269; Conner v. Clarke, 12 Cal. 168. But see, Gandy v. Babbitt, 56 Ga. 640.

[34] Westmoreland v. Foster, 60 Ala. 448; Thornton v. Rankin, 19 Mo. 193; Zellner v. Cleveland, 60 Ga. 633; Jenkins v. Sherman, 77 Miss. 884, 28 So. 726; McKinney v. Beeson, 14 La. 254.

[35] Shaw v. Spencer, 100 Mass. 382, 97 Am. Dec. 107; Smith v. Dibrell, 31 Tex. 239, 98 Am. Dec. 526; Nickerson v. Gilliam, 29 Mo. 456, 77 Am. Dec. 583.

[36] Lea v. Bringier, 19 La. Ann. 197; Ferguson v. Morris, 67 Ala. 389.

[37] Governor v. Daily, 14 Ala. 469; Felker v. Emerson, 16 Vt. 653, 42 Am. Dec. 532.

[38] First Nat. Bank v. Gay, 63 Mo. 33, 21 Am. Rep. 430; Mechanics' Bank v. Bank of Columbia, 5 Wheat. 326.

[39] Bryson v. Lucas, 84 N. C. 286, 37 Am. Rep. 634; Rodger Williams Bank v. Groton Mfg. Co., 16 R. I. 504, 17 Atl. 170; Penn. Mutual Life

The Negotiable Instruments Law provides:

"Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability."[40]

"A signature by 'procuration' operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority."[41]

The power to make or indorse negotiable paper must be expressly granted or given by the principal. Thus the general authority bestowed upon an agent to transact the business of his principal and to receive payment of and to discharge debts, will not imply an authority to accept or indorse bills so as to charge the principal. A power expressly granted is subject to strict interpretation, and must be performed in strict conformity with the terms thereof.[42] Thus it has been decided that a negotiable instrument differing in amount from that authorized, or made payable at a different time will not bind the principal.[43] The implied authority of an agent to bind his principal by a bill or note is upheld in some cases, as where the agent has formerly made a note or drawn a bill for his principal, and such principal has recognized his acts.[44] It is provided in the Negotiable Instrument Law that: *"The signature of any party may be made by a duly authorized agent. No particular form of appointment*

Ins. Co. v. Conoughy, 54 Neb. 124, 74 N. W. 422; Peterson v. Honan, 44 Minn. 166, 46 N. W. 303, 20 Am. St. Rep. 564.

Contra, Keidan v. Winegar, 95 Mich. 430. This decision affirmed by statute.

May be authorized by parol. Odd Fellows v. Bank, 42 Mich. 461; Coy v. Stiner, 53 Mich. 42; Handyside v. Cameron, 21 Ill. 588, 74 Am. Dec. 119.

[40] Negotiable Instruments Law, § 39 (20), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[41] Negotiable Instruments Law, § 40 (21), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[42] Handyside v. Cameron, 21 Ill. 588, 74 Am. Dec. 119; Humphreys v. Wilson, 43 Miss. 328; Temple v. Pomroy, 4 Grey 128; Ryhiner v. Feickert, 92 Ill. 305, 34 Am. Rep. 130.

But see, Nutting v. Sloan, 59 Ga. 392.

[43] King v. Sparks, 77 Ga. 285; Blackwell v. Ketcham, 53 Ind. 184.

[44] Stroh v. Hinchman, 37 Mich. 490; Hammond v. Varian, 54 N. Y. 398; Greenfield Bank v. Crafts 2 Allen, 269.

is necessary for the purpose, and the authority of the agent may be established as in other cases of agency."[45]

A general authority to an agent is presumed to continue until its revocation is generally known. And if A is the agent of B to draw bills in his name, B will be liable as drawer to ignorant indorsees, who had no knowledge of the change in the relationship of the parties, or of the revocation of the agency.[46]

It should be noted that officers of the government and other public corporations are not held to the same rule of agency by which in exceeding their authority they bind themselves; everyone having dealings with a public officer is supposed to know the legal limitations of his agency, so that when a public officer in innocent mistake of the law makes an unauthorized contract in the name of the public corporation neither he nor the corporation is bound.[47]

The officer of a public corporation acting in his official capacity must use care that his official character appears on the face of the instrument, and it is held that merely adding his official designation to his signature will relieve him of personal liability.

Below is a form of signature by an agent.

SIGNATURE BY AN AGENT.

$100.00 *Minneapolis, Minn., July 1, 1909.*

Thirty days after date I promise to pay to the order of Earl Matlock.....

One hundred.....Dollars

DONALD S. MORRIS.

By NATHAN C. REDDING,

Agent.

§ 34. Same—Persons acting in representative capacity—Partners. Partners only have implied power to make and ne-

[45] Odd Fellows v. Bank, 42 Mich. 461; Sager v. Tupper, 42 Mich. 605; Kennedy v. Graham, adm., 9 Ind. App. 624, 35 N. E. 925, 37 N. E. 25.

In case of partnership plaintiff must show authorization in case it is disputed. Gooding v. Underwood, 89 Mich. 189.

[46] Story on Agency, §§ 470-473.

[47] The Floyd Acceptances, 7 Wall. 666; Walker v. Christian, 21 Gratt. 297; Hodgson v. Dexter, 1 Cranch. 345.

gotiate negotiable instruments in case the firm is a trading partnership, or one whose business necessitates the use of negotiable paper. If it is in the nature and scope of the firm's business to issue such paper, any one or more partners may bind the firm by executing or accepting a note or bill in a transaction within such scope even though the proceeds are for his own benefit if the holder of the paper was not a party to the fraud.[48] But if money is loaned to a firm on the sole credit of one of its members, and a note is given therefor signed by such member, the obligation is that of the individual member and not that of the firm, and the fact that the proceeds thereof are used for the benefit of the firm is not material.

As a general rule a secret, silent, or dormant partner, whose name does not appear, is bound by notes made or bills drawn, accepted, or indorsed by his co-partners in the name of the firm, both when they are negotiated for the benefit and when given under such circumstances as to bind the firm.

After the dissolution of a partnership, no partner has any authority to bind any former partner by giving a promissory note in the name of the firm; the act of dissolution is a revocation of all authority to act for and contract in the name of the partnership.[49] As between the firm and the world, the authority of the ex-partners to bind each other by bills or notes within the scope of the former partnership continues until a sufficient notice of the dissolution is duly given.

But notice is not necessary when a secret, silent, or dormant partner retires, for he has not been held out as a member of the firm. If, however, such partner is known to certain individuals to have been a partner, he must notify them of his retirement to escape liability for future acts of the firm.[50]

The proper form of signing the firm name to any contract made by a partner is to write the firm name and nothing else. It is permissible but unnecessary to write the name of the partner after the firm signature, thus: "Smith & Brown, per William J. Brown."

[48] Bank v. Alden, 129 U. S. 373; Fulton v. Loughlin, 118 Ind. 286; Carrier v. Cameron, 31 Mich. 373; Hayward v. Gray, 12 Gray 453; Spaulding v. Kelly, 50 N. Y. S. 244; Towle v. Dunham, 76 Mich. 367. See note 48 Am. St. Rep. 438.

[49] Humphries v. Chastain, 5 Ga. 166, 48 Am. Dec. 247; Commercial Bank v. Perry, 10 Rob. (La.) 61, 43 Am. Dec. 168; Hurst v. Hill, 8 Md. 399, 63 Am. Dec. 705; Wilson v. Forder, 20 Ohio St. 95, 5 Am. Rep. 627.

[50] Pitkin v. Beufer, 50 Kan. 108, 34 Am. St. Rep. 110; Baptist Book Concern v. Carswell, Tex. Civil Appeals, 1898, 46 S. W. 858; Nussbaumer v. Becker, 87 Ill. 281, 29 Am. Rep. 53.

As to accommodation paper, which term will be explained later, the following rule has been laid down: No one member of a firm can bind it, without the consent of all its members, by signing the co-partnership name as drawer, maker, acceptor, or indorser of negotiable paper for his private accommodation or for the accommodation of a third party, and this for the obvious reason that such a transaction is not within the scope of the co-partnership business, unless expressly or impliedly made so and that it would ordinarily be without authority and in fraud of the firm.[51]

§ 35. Same—Persons acting in representative capacity—Private corporations. The power of private corporations to become parties to bills of exchange or promissory notes is coextensive with their power to contract debts.[52] Whenever a corporation is authorized to contract a debt it may draw a bill or give a note in payment of it. Every corporation, therefore, may become a party to bills or notes for some purposes. Thus, a mere religious corporation may need fuel for its rooms, and as an economical measure may buy a cargo of coal, and give its note for it; and such a note would undoubtedly be valid in this country.

The cashier of a bank, the president of a corporation or any other administrative officer, as secretary or treasurer, may be expressly authorized to issue negotiable paper for the corporation, or he may have such power from implication by reason of having previously exercised the power.[53]

The directors of a corporation are in control of its affairs and have the management of its business, subject to the restrictions and limitations imposed upon them by the articles of incorporation, by-laws and statutes. If the issuing of commercial paper is within the power of the corporation itself, such paper may in all cases be executed by the directors acting as a board. So the sole manager of a corporation intrusted by the officers with its entire conduct may bind it by executing a note in its name, especially where the officers had previously acquiesced in his execution of similar notes.[54]

The power to receive negotiable paper must necessarily be ac-

[51] Hendric v. Berkowitz, 37 Cal. 113, 99 Am. Dec. 251; Chenowith v. Chamberlin, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145; Fort Madison Bank v. Alden, 129 U. S. 381.

[52] Mott v. Hicks, 1 Cow. (N. Y.) 513, 13 Am. Dec. 550; Auerbach v. Le Sueur Mill Co., 28 Minn. 291, 41 Am. Rep. 285; Olcott v. Tioga R. Co., 27 N. Y. 546, 84 Am. Dec. 298.

[53] Odd Fellows v. Sturgis First Nat. Bank, 42 Mich. 461; Olcott v. Tioga R. Co., 27 N. Y. 546, 84 Am. Dec. 298.

[54] American Exch. Nat. Bank v. Oregon Pottery Co., 55 Fed. Rep. 265; Credit Co. v. Howe Mach. Co., 54 Conn. 357, 1 Am. St. Rep. 133.

companied by a power to transfer it to a third person, in the ordinary course of its business.[55] Many of the same rules which control indorsement and transfer of negotiable paper by agents are also applicable to officers and agents of a corporation.

We have already seen under the section pertaining to agents as parties (§ 33) the proper form of making the signature of a corporation by an agent or officer. In making such paper it is generally held that the corporation may dispense with the use of its corporate seal.

Below is a form of signature:

CORPORATE SIGNATURE.

$250.00 *St. Paul, Minn., July 1, 1909.*

Sixty days after date The Acme Company promises to pay to the order of Joseph Thompson..... Two hundred fifty.....Dollars at First National Bank.

Value received. *THE ACME COMPANY.*
By JAMES STARR,
Treasurer.

§ 36. Same—Persons acting in representative capacity—Municipal or public corporations. As to municipal or public corporations, such as cities, towns and other like corporations erected by the government as governmental agencies, it is held that there is no doubt that they may have the power conferred on them to execute negotiable paper, but the better opinion is that such power does not exist unless expressed or clearly implied. And the extent of the power may be limited by statute, as well as the existence of the power.[56]

§ 37. Same—Persons acting in representative capacity—Public officers. A negotiable instrument may be drawn payable to the order of *"the holder of an office for the time being."*[57]

[55] McIntire v. Preston, 10 Ill. 48, 48 Am. Dec. 321; Goodrich v. Reynolds, 31 Ill. 490, 83 Am. Dec. 240; Buckley v. Briggs, 30 Mo. 452.

[56] Claiborne Co. v. Brooks, 111 U. S. 400; Newgrass v. New Orleans, 42 La. Ann. 163, 21 Am. St. Rep. 368; Knopp v. Hoboken, 39 N. J. L. 394; Merrill v. Monticello, 138 U. S. 673; State v. Smith, 47 N. J. L. 473.

[57] Neg. Inst. Law, § 27, sub. 6

This provision of the law was intended to declare the general rule that where an instrument was payable to a person holding a position of a representative character that he may be regarded as the payee of the instrument in behalf of all the persons whom he represents.

When public officers in good faith contract with parties having full knowledge of the extent of their authority, or who have equal means of knowledge with themselves, they do not become individually liable unless the intent to incur a personal responsibility is clearly expressed, although they may through ignorance of the law have exceeded their authority. This should be the rule in case of the making, drawing, accepting, and indorsing of negotiable instruments by public officers, but the cases upon this question are not all in accord with the application of this rule to such instruments.[58]

(8), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[58] Walker v. Christian, 21 Gratt. 297; Hodgson v. Dexter, 1 Cranch 345.

CHAPTER VI.

FORMAL AND ESSENTIAL REQUISITES.

§ 38. Definition of promissory note.
39. Definition of bill of exchange.
40. Formal and essential requisites in general.
41. Must be in writing.
42. As to style and material.
43. The date.
44. The signature.
45. Must be promise or order to pay.
46. Must be payable to order or bearer.
47. Must be certain as to promise or order to pay.
48. Must be certain as to amount.
49. Must be certain as to time of payment.
50. Must be certain as to place of payment.
51. Must be payment in money.
52. Must be necessary parties.
53. The delivery.
54. As to value received.
55. As to agreements controlling the operation.
56. As to days of grace.
57. As to stamps.
58. As to blanks.
59. As to instruments bearing a seal.
60. The several parts of a foreign bill called a set.

§ 38. Definition of promissory note. A satisfactory definition of a promissory note is found in the Negotiable Instruments Law, which states:

"A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him."[1]

§ 39. Definition of bill of exchange. The following is a good definition of a bill of exchange found in the Negotiable Instruments Law:

"A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer."[2]

[1] Neg. Inst. Law, § 320 (184), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[2] Neg. Inst. Law, § 210 (126), where all cases directly or indirectly bearing upon or citing the Law are grouped.

Bills of exchange are either foreign or inland—foreign, when drawn in one state or country, and made payable in another state or country;[3] inland, when drawn, and made payable in the same state or country.[4] For the purpose of the law of negotiable instruments, the several states of the United States are foreign to each other.[5] Thus, a bill drawn in Pittsburg, Pennsylvania, and payable in Columbus, Ohio, is a foreign bill, while one drawn in Cincinnati, Ohio, and payable in Cleveland, in the same state, is an inland bill of exchange.

The Negotiable Instruments Law provides:

"An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill."[6]

§ 40. Formal and essential requisites in general. The Negotiable Instruments Law has the following provisions:[7]

"An instrument to be negotiable must conform to the following requirements: (1) It must be in writing[8] *and signed*[9] *by the maker or drawer. (2) Must contain an unconditional promise*

[3] Armstrong v. Am. Exchange Bank, 133 U. S. 433; Phoenix Bank v. Hussey, 12 Pick 483; Holliday v. McDougall, 20 Wend. 81; Commercial Bank of Ky. v. Varnum, 49 N. Y. 269; Mason v. Dousay, 35 Ill. 424; Ticonic Bank v. Stacpole, 41 Me. 302; Aborn v. Bosworth, 1 R. I. 401; Brown v. Ferguson, 4 Leigh 37; Morrison v. Farmers' & Merchants' Bank, 9 Okla. 697; Gardner v. Bank of Tenn., 31 Tenn. 420; American Express Co. v. Haire, 21 Ind. 4; Joseph v. Soloman, 19 Fla. 623; Hartridge v. Wesson, 4 Ga. 101; Turner v. Patton, 49 Ala. 406; Gray Tie & Lumber Co. v. Farmers' Bank, 22 Ky. L. Rep. 1333; Simpson v. White, 40 N. H. 540; Linville v. Welch, 29 Mo. 203.

[4] Lenning v. Ralston, 23 Pa. St. 137; Strawbridge v. Robinson, 5 Gilman (Ill.) 472; Kearney v. King, 2 Barn & Ald. 301; Riggin v. Collier, 6 Mo. 568; Yale v. Ward's Ex'r, 30 Tex. 17.

[5] Bank of U. S. v. Daniel, 12 Peters, 32; Commercial Bank v. Varnum, 49 N. Y. 269.

[6] Neg. Inst. Law, § 213 (129), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[7] Neg. Inst. Law, § 20 (1), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[8] Geary v. Physic, 5 B. & C. 234; Brown v. Butchers' Bank, 6 Hill 443; Reed v. Roark, 14 Tex. 325; Merritt v. Clason, 12 Johns. (N. Y.) 102; Draper v. Pattini, 2 Spears L. (S. C.) 292.

[9] McCall v. Taylor, 34 L. J. R. C. P. 365; Reg. v. Harper, L. R. 7 Q. B. Div. 78; Cadillac State Bank v. Cadillac Stave and Heading Co., 129 Mich. 15; Rogers v. Coit, 6 Hill 322; Brown v. McHugh, 35 Mich. 50; Bliss v. Johnson, 162 Mass. 323; Lampkin v. State, 105 Ala. 1; Quinn v. Sterne, 26 Ga. 223; Schmidt v. Schmaelter, 45 Mo. 502; Hunt v. Adams, 5 Mass. 545; Clason v. Bailey, 14 Johns. (N. Y.) 484.

or order[10] *to pay a sum certain*[11] *in money.*[12] *(3) Must be payable on demand*[13] *or at a fixed or determinable future time.*[14] *(4) Must be payable to order or to bearer;*[15] *(5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.*"[16]

[10] White v. Cushing, 88 Me. 339; Iron City Bank v. McCord, 139 Penn. St. 52; Worden v. Dodge, 4 Denio 159; Brooke v. Struthers, 110 Mich. 569; Dilley v. Van Wie, 6 Wis. 206; Nat. Savings Bank v. Cable, 73 Conn. 568; Torpey v. Tebo, 184 Mass. 307.

[11] Smith v. Clopton, 4 Tex. 109; Parsons v. Jackson, 99 U. S. 440; Knight v. Jones, 21 Mich. 161; Parker v. Plymell, 23 Kan. 402; Smith v. Crane, 33 Minn. 144; Dodge v. Emerson, 34 Me. 96; Marrett v. Equitable Ins. Co., 54 Me. 537; Palmer v. Ward, 6 Gray (Mass.) 340; Cushman v. Haynes, 20 Pick 132.

[12] Auerbach v. Prichett, 58 Ala. 451; Quincy v. Merritt, 11 Hump. (30 Tenn.) 439; First Nat. Bank v. Slette, 67 Minn. 425; Chandler v. Calvert, 87 Mo. App. 368; First Nat. Bank v. Greenville Nat. Bank, 84 Tex. 40; Morton v. Naylor, 1 Hill (N. Y.) 583; Hanover Nat. Bank v. American Dock & Trust Co., 148 N. Y. 612; Corn Exchange v. Same, 149 N. Y. 174; Black v. Ward, 27 Mich. 191; Oliver v. Shoemaker, 35 Mich. 464; Swetland v. Creigh, 15 Ohio 118; Bull v. Bank, 123 U. S. 105; Nat. State Bank v. Ringel, 51 Ind. 393; Frank v. Wessels, 64 N. Y. 155; Huse v. Hamblin, 29 Iowa 501; Fry v. Rousseau, Fed. Cas. 5141, 3 McLean 106; Dinsmore v. Duncan, 57 N. Y. 573; Sanger v. Stimson, 8 Mass. 260; Goading v. Britain, 1 Stew. & P. 282; Black v. Ward, 27 Mich. 191; Poole v. McCrary, 1 Ga. 319; Hogue v. Williamson, 85 Tex. 553; Hamburg Bank v. Johnson, 3 Rich. 42; Hodges v. Clinton, 1. N. C. 76.

[13] Aldous v. Cornwell, L. R. 3 Q. B. 573; Collins v. Trotter, 81 Mo. 278; Hall v. Toby, 110 Pa. St. 318; Messmore v. Morrison, 172 Pa. St. 300; Porter v. Porter, 51 Me. 376; Jones v. Brown, 11 Ohio St. 601; Bank v. Price, 52 Iowa 570; McLeod v. Hunter, 29 N. Y. Misc. 558; Bowman v. McChesney, 22 Grat. 609; Palmer v. Palmer, 36 Mich. 487; Citizens' Savings Bank v. Vaughan, 115 Mich. 156.

[14] Mattison v. Marks, 31 Mich. 421; Walker v. Woolen, 54 Ind. 164; Ernst v. Steckman, 74 Pa. St. 13; Charlton v. Reed, 61 Iowa 166; Curtis v. Horn, 58 N. H. 504; Jordan v. Tote, 19 Ohio St. 586; Dorsey v. Wolff, 142 Ill. 589; Hunter v. Clarke, 184 Ill. 158; Mahoney v. Fitzpatrick, 133 Mass. 157; Stark v. Olsen, 44 Neb. 646; Clark v. Seen, 61 Kan. 526; Hegeman v. Moon, 131 N. Y. 462; Glidden v. Henry, 104 Ind. 278.

[15] Sherman Bank v. Apperson, 4 Fed. 25; Musselman v. McElhenny, 23 Ind. 4, 85 Am. Dec. 445; Smur v. Forman, 1 Ohio 272; Maule v. Crawford, 14 Hun 193; Gerard v. La Coste, 1 Dall. (Penn.) 194; Bacus v. Danforth, 10 Conn. 297; Hallis v. Vander Grift, 5 Houst. 521; Davis v. Holm, 34 Mo. App. 332; Yingling v. Kohlhass, 18 Md. 148; Searles v. Seipp, 6 S. D. 472, 61 N. W. 804; Wilson County v. Third Nat. Bank, 103 U. S. 770; United States v. White, 2 Hill (N. Y.) 59, 37 Am. Dec. 374; Adams v. King, 16 Ill. 169, 61 Am. Dec. 64; Blackman v. Layman, 63 Ala. 547, 35 Am. Rep. 57; Gordon v. Anderson, 83 Iowa 224, 49 N. W. 86, 12 L. R. A. 483; Brown v. Gilman, 13 Mass. 158.

[16] Peto v. Reynolds, 9 Exch. 410; Watrous v. Halbrook, 39 Tex.

There is also another provision in the Law providing that:[17]

"The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof."

§ 41. Must be in writing. As pointed out above, the instrument must be in writing. When writing is spoken of, it is not meant merely that which has been written with a pen or pencil. It includes also that which is in print or has been printed. The word instrument implies that which has been reduced to writing. Therefore, the words negotiable instruments themselves indicate that which has been reduced to writing. In order to be negotiable there must be a writing of some kind, else there would be an absence of the thing to be negotiated or passed from hand to hand. The reason a promissory note or bill of exchange must be in writing is clear, that is, the instrument is currency, and "could not run on crutches."

So the whole of the bill or note must be expressed in writing. If it is complete on its face, the general rule is that no evidence of a verbal agreement made at the time, qualifying its terms, can be admitted. Contemporaneous written agreements are admissible for the purpose of controlling the effect of the instrument as between immediate parties and those having notice. Parol evidence is generally admissible as between the parties, to show their real relations to each other, and if there be a latent ambiguity to explain it. And, in general, parol evidence is admissible between the original parties to show fraud, accident, or mistake in the creation of the instrument, or the failure (entire or partial) of consideration.[18]

It has been decided many times that if any discrepancy or ambiguity exists between the figures and the words indicating the amount called for by the instrument, the words[19] are to control. The figures constitute no part of the note or bill, but are inserted merely for convenience of reference.

§ 42. As to style and material. The law does not require any particular form or style as to a promissory note or bill of ex-

572; Ala. Coal Mining v. Brainard, 35 Ala. 476; Gray v. Milner, 8 Taunt. 739, 4 E. C. L. 361; Wheeler v. Webster, 1 E. D. Smith (N. Y.) 1; Funk v. Babbitt, 156 Ill. 408; Forward v. Thompson, 12 U. C. Q. B. 103; Miner v. Vedder, 66 Mich. 101.

[17] Neg. Inst. Law, § 29 (10), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[18] See Chapters XXV and XXVI on Evidence.

[19] Saunderson v. Piper, 5 Bing. N. C. 425; Mears v. Graham, 8 Blackf. (Ind.) 144; Witty v. Mich. Mutual Life Ins. Co., 123 Ind. 411; Smith v. Smith, 1 R. I. 398, 53 Am. Dec. 652; Burnham v. Allen, 1

change, yet it does not seem that it would be wise to depart from the approved forms in vogue among merchants. The law looks to the substance of the transaction rather than the form, and if the intention of the parties as to assuming the obligation of drawers and makers of negotiable instruments can be determined, the law will give them force and effect regardless of the form. There is no arbitrary rule governing the material upon which the instrument should be written. It may be written upon parchment, cloth, leather or any other substitute for paper. It may be written either with a pencil or with ink.[20] The permanence and security of ink as compared to a writing in pencil makes the ink preferable.

§ 43. The date. A date in a bill or note is not necessary.[21] The Negotiable Instruments Law provides that *"the validity and negotiable character of an instrument are not affected by the fact that it is not dated."*[22]

It is of no consequence on what portion of the paper a date is written, but it is usually written in the upper right-hand corner of the instrument. If dated, it will be presumed to have been executed on the day it bears date.[23] That is, *"where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement, as the case may be."*[24]

If there be no date, it will be considered as dated at the time it was issued,[25] and parol evidence is admissible to show from what time an undated instrument was intended to operate, or (if a date appears) to show that there was a mistake in the date. So an instrument may be ante-dated or post-dated.

Gray 496; Williamson v. Smith, 1 Cold. (Tenn.) 1.

[20] Geary v. Physic, 5 Barn. & Cress. (Eng.) 234; Reed v. Roark, 14 Tex. 325, 65 Am. Dec. 127; Merritt v. Clason, 12 Johns. (N. Y.) 102, 7 Am. Dec. 286; Draper v. Pattini, 2 Spears L. (S. C.) 292.

[21] Husbrook v. Wilder, 1 Pin (Wis.) 643; Mich. Ins. Co. v. Leavenworth, 30 Vt. 11; Cowing v. Altman, 71 N. Y. 435; Biggs v. Piper, 86 Tenn. 589; Almich v. Downey, 45 Minn. 460, 48 N. W. 197; Huston v. Young, 33 Me. 85.

[22] Neg. Inst. Law, § 25 (6), subd. 1, where all cases directly or indirectly bearing upon or citing the Law are grouped.

[23] Anderson v. Weston, 8 Scott, 583; Maybury v. Berkery, 102 Mich. 126; Hill v. Dunham, 7 Gray 543; Wagner v. Kenner, 2 Rob. (La.) 120.

[24] Neg. Inst. Law, § 30 (11), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[25] Pasmore v. North, 13 East 517; Brewster v. McCardel, 8 Wend. 478; Bayley v. Taber, 5 Mass. 286; Serle v. Norton, 9 M. & W. 309; Lansing v. Gaine, 2 Johns. (N. Y.) 300; Vail v. Van Doren, 45 Neb. 450, 63 N. W. 787; New York Iron Mine v. Citizens Bank, 44 Mich. 344.

"The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery."[26]

Where a blank has been left on the instrument for the date, it may in some cases be filled in by the holders. Thus, *"where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date."*[27]

§ 44. The signature. It is immaterial in what part of the instrument the name appears, whether at the top, in the middle, or at the bottom. Anything from which it will appear that a person intended to make the instrument his own is sufficient.[28] As long as the signature or emblem of the drawee or maker appears anywhere upon the instrument, it is deemed *prima facie* evidence of his intention to be bound by its obligation.[29]

It is immaterial whether the writing is in pencil or ink, although as a matter of permanence and security, ink is, of course, preferable.[30] And the name may be printed or typewritten as well as written, though, in such cases, it cannot prove itself, and must be shown to have been adopted and used by the party as his signature.[31] If another sign the name of the party in his presence and at his request, it is the same as if he did it himself;[32] and if another sign the party's name by verbal or other authority, it is sufficient. The full name may be written; and at least the surname should appear, and generally does. But

[26] Neg. Inst. Law, § 31 (12), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[27] Neg. Inst. Law, § 32 (13), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[28] Lampkin v. State, 105 Ala. 1, 16 So. 575; Irvin v. Sterne, 26 Ga. 223, 71 Am. Dec. 204; Dow Law Bank v. Godfrey, 126 Mich. 521, 85 N. W. 1075, 86 Am. St. Rep. 559.

[29] Neg. Inst. Law, § 36 (17), and cases there cited.

[30] Reed v. Roark, 14 Tex. 329; Geary v. Physic, 5 Barn & C. 234.

[31] Pennington v. Baehr, 48 Cal. 565; Lexington v. Union Nat. Bank, 75 Miss. 1, 22 So. 291; Weston v. Myers, 33 Ill. 424.

[32] Crumrine v. Crumrine, 14 Ind. App. 641; 43 N. E. 322; Kennedy

this is not indispensable—the initials are sufficient,[33] and any mark which the party uses to indicate his intention to bind himself will be as effectual as his signature, whether there be a certificate of witnesses on the instrument or not.[33a] And *"the signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.*[34]

"A signature by 'procuration' operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.[35]

"Where a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof, against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."[36]

The Negotiable Instruments Law provides:

"No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name."[36a]

§ 45. Must be promise or order to pay. In order that the instrument contain a promise it is not necessary to use the word promise. But while it is not necessary to use that particular word, it has been held that the instrument must contain an express promise.[37] The instrument contains an express promise whenever it contains an expression equivalent to the word promise. It has been held that where a certain time for payment has been expressed in the instrument, or the words "on demand" are used, the instrument contains a promise. Example, "Due A. B. $76.50

v. Graham, 9 Ind. App. 624, 35 N. E. 925.

[33] Weston v. Meyers, 33 Ill. 424; Merchants Bank v. Spicer, 6 Wend. (N. Y.) 443. See note 14 L. R. A. 693.

[33a] Signing by mark. See 22 L. R. A. 372.

[34] Neg. Inst. Law, § 38 (19), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[35] Neg. Inst. Law, § 40 (21), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[36] Neg. Inst. Law, § 42 (23), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[36a] Neg. Inst. Law, § 37 (18), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[37] Smith v. Bridges, 1 Ill. 18; Hegeman v. Moon, 131 N. Y. 462, 30 N. E. 487; Taylor v. Steele, 16 M. & W. 665.

on demand,"[38] or "Pay to A. B. $76.50 on Dec. 24, 1908."[39] The words "Value received,"[40] or "to be accountable,"[41] do not import, nor are they equivalent to a promise to pay. In a bill of exchange it is no more necessary that the word order should be used than it is that the word promise should be used in a promissory note.[42] Any words which are equivalent to an order or which show the drawer's will that the money should be paid are sufficient to make the instrument a bill of exchange. A bill of exchange is something more than the mere asking of a favor. It is in its very nature an instrument demanding a right. Hence a mere request or supplication made or authority given to pay a certain amount of money has been held not to be a bill.[43] The following would be a good bill: "Mr. Smith will much oblige Mr. Jones *by paying* John Brown, or order, on account $50.00." The words *by paying* are held sufficient to import an order to pay.[44]

§ 46. Must be payable to order or bearer. By the Negotiable Instruments Law *"bearer means the person in possession of a bill or note which is payable to bearer."*[45]

However, it is not essential that the words to order or to bearer be used so as to make the instrument negotiable, although they are the simplest words and the ones most frequently used.[46] The words to *A* or holder and to *A* and his assigns are equivalent words which will render the instrument negotiable.[47] These words of negotiability may be dispensed with and the expression, "This is and shall be negotiable," may be inserted in the instrument, which expression makes the paper fully negotiable.[48] The

[38] Smith v. Allen, 5 Day (Conn.) 337; Kimball v. Huntington, 10 Wend. (N. Y.) 675; Currier v. Lockwood, 40 Conn. 349, 16 Am. Rep. 40.

[39] Cowan v. Hollack, 9 Colo. 572, 13 Pac. 700; Kendall v. Lewis, 10 Ky. L. Rep. 362.

[40] St. Vrain Stone Co. v. Denver, N. & P. R. Co. 18 Colo. 211, 32 Pac. 827.

[41] Hyne v. Dewdney, 21 L. J. Q. B. 278. But see Hegeman v. Moon, 131 N. Y. 462.

[42] Ellison v. Collingridge, 67 E. C. L. 570; Ruff v. Webb, 1 Esp. 129, 5 Rev. Rep. 723; Bresenthall v. Williams, 1 Dew. (Ky.) 329, 85 Am. Dec. 629.

[43] Woolley v. Sargent, 8 N. J. L. 262, 14 Am. Dec. 419; Little v. Slackford, M. & M. 171, 31 Rev. Rep. 726, 22 E. C. L. 498; Russell v. Powell, 14 M. & M. 418, 14 L. J. Exch. 269.

[44] Ruff v. Webb, 1 Esp. 129, 5 Rev. Rep. 723.

[45] Neg. Inst. Law, § 2 (191), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[46] Wilson County v. Third Nat. Bank, 103 U. S. 770; United States v. White, 2 Hill (N. Y.) 59, 37 Am. Dec. 374.

[47] Putnam v. Crymes, 1 McMull 9, 36 Am. Dec. 250; Wilson County v. Third Nat. Bank, 103 U. S. 770; Dutchess Co. Ins. Co. v. Hachfield, 1 Hun 676.

[48] Raymond v. Middleton, 29 Pa. St. 529; Cudahy Packing Co. v.

instrument may also be made negotiable by using the words "to the order of *A*."[49] But if the instrument reads "to the bearer, *A*," it is not negotiable, because the expression, "to the bearer," is only descriptive of *A*, and there are no words of negotiability.[50]

The Negotiable Instruments Law sets down certain rules as to when an instrument is held payable to order and also when held payable to bearer:

"*The instrument is payable to order where it is drawn payable to the order of a specified person or to him or to his order. It may be drawn payable to the order of: (1) A payee who is not maker, drawer or drawee; or (2) the drawer or maker; or (3) the drawee; or (4) two or more payees jointly; or (5) one or some of several payees; or (6) the holder of an office for the time being.*

"*Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty.*[51]

"*The instrument is payable to bearer: (1) When it is expressed to be so payable; or (2) when it is payable to a person named therein or bearer; or (3) when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or (4) when the name of the payee does not purport to be the name of any person; or (5) when the only or last indorsement is an indorsement in blank.*"[52]

§ 47. Must be certainty as to engagement to pay. If the instrument is a bill, it must contain a certain direction to pay[53]—if it is a note, a certain promise to pay.[54] As stated heretofore, a bill is, in its nature, the demanding of a right, not the mere asking of a favor, and therefore a supplication made or authority given to pay an amount is not a bill. The language: "Please to send $10.00 by bearer, as I am so ill I cannot wait upon you," is held not to be a bill.[55]

A promissory note must contain a certain promise to pay. If over and above the mere acknowledgment of debt, there may

Sioux Nat. Bank, 75 Fed. 473, 21 C. C. A. 428.

[49] Wittey v. Mich. Mut. etc. Co., 123 Ind. 411, 24 N. E. 141; Howard v. Palmer, 64 Me. 86; Stevens v. Gregg, 86 Ky. 461, 12 S. W. 775.

[50] Weaver v. Scott, 32 Ia. 22.

[51] Neg. Inst. Law, § 27 (8), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[52] Neg. Inst. Law, § 28 (9), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[53] Gillian v. Myers, 31 Ill. 525; Knowlton v. Cooley, 102 Mass. 233.

[54] Smith v. Bridges, 1 Ill. 18; Forward v. Thompson, 12 U. C. I. B. 103; Taylor v. Steele, 16 M. & W. 665.

[55] King v. Ellor, 1 Teach. 323.

be collected from the words used a promise to pay it, the instrument may be regarded as a promissory note.[56]

"An instrument is payable on demand: (1) Where it is expressed to be payable on demand, or at sight, or on presentation; or (2) in which no time for payment is expressed. Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand."[57]

§ 48. Must be certain as to amount. It is also a requisite to the negotiability of an instrument that it shall call for the payment of a definite and certain sum,[58] and not for unliquidated damages. The amount to be paid or the amount which the paper represents should be stated plainly on the face of the instrument, and like the denomination of money must be stated in the body of the instrument or it will be defective, unless it has been left blank and express or implied authority given to fill it up. The amount is customarily written in the margin also, but this is held to be no part of the instrument, and made simply for convenience of reference, and the statement in the body of the instrument controls, and should they vary any holder may change the marginal figures to conform to the amount as written in the body of the paper.[59] Unless required by statute to be written in words, the amount may be stated in the body of the instrument in figures. Abbreviations and characters which have well defined meanings may be employed.

There is some conflict of authority as to whether if there be added to the amount, "with exchange,"[60] or "with current exchange on another place,"[61] the commercial character of the paper is or is not impaired. The weight of authority is that it

[56] Smith v. Bridges, 1 Ill. 18; Forward v. Thompson, 12 U. C. I. B. 103; Taylor v. Steele, 16 M. & W. 665.

[57] Neg. Inst. Law, § 26 (7), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[58] Gaar v. Louisville Banking Co., 11 Bush. (Ky.) 180, 21 Am. Rep. 209; Kendall v. Galvin, 15 Me. 131, 32 Am. Dec. 141; Port Huron First Nat. Bank v. Carson, 60 Mich. 432, 27 N. W. 589. As to effect of marginal letters or figures in bill or note otherwise blank as to amount, see note 2 L. R. A. (N. S.) 879.

[59] Neg. Inst. Law, § 36 (17), sub. 1, and cases there cited; Smith v. Smith, 1. R. I. 398, 53 Am. Dec. 652; Rockville Nat. Bank v. Second Nat. Bank, 69 Ind. 479, 35 Am. Rep. 236.

As to when marginal figures may be referred to see: Sweetzer v. French, 13 Metc. (Mass.) 262; Petty v. Fleischel, 31 Tex. 169, 98 Am. Dec. 524.

[60] Clark v. Skeen, 61 Kan. 526, 60 Pac. 327, 78 Am. St. Rep. 337, 49 L. R. A. 190; Hastings v. Thompson, 54 Minn. 184, 55 N. W. 968, 40 Am. St. Rep. 315, 21 L. R. A. 178. *Contra*, Culbertson v. Nelson, 93 Ia. 187, 61 N. W. 854, 57 Am. St. Rep. 266, 27 L. R. A. 222.

[61] Smith v. Kendall, 9 Mich. 241, 80 Am. Dec. 83.

is not, as that is capable of definite ascertainment and so the amount to be added is certain.

A stipulation as to interest does not make the amount uncertain.[62] It might be stated here, by way of parenthesis, that it is a general rule of commercial law that where a note is made payable with interest, without specifying the rate, or the time from which the interest is to be computed, the note carries interest from the date of its complete execution or its issue, at a legal rate fixed by law.[63]

The provisions in notes, payable in part payment or installments, to the effect that if any one of the installments is not paid as agreed, all installments or the whole sum shall become due and payable, does not destroy the negotiability of the note, and such notes are quite common.[64] The provision that the interest shall be paid at stated intervals, and if not paid the entire sum shall become due, is also common, and does not affect the negotiability of the paper. There is likewise a conflict as to whether by adding the words, "with reasonable attorney's fees," the negotiability of an instrument is destroyed. The better opinion is that they do not.[65] Instruments with such words are not like contracts—to pay money and do some other things. They are simply for the payment of a certain sum of money at a certain time, and the additional stipulations as to attorney's fees can never go into effect if the terms of the bill or note are complied with. They are, therefore, incidental and ancillary to the main engagement, intended to assure its performance or to compensate for trouble and expense entailed by its breach.

The Negotiable Instruments Law fully covers all such stipulations by providing that *"the sum payable is a sum certain within the meaning of this act, although it is to be paid:*

"(1) With interest; or

"(2) By stated installments; or

"(3) By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or

[62] Neg. Inst. Law, § 21 (2), where all cases directly or indirectly bearing upon or citing the Law are grouped.

Kirkwood v. Hastings First Nat. Bank, 40 Neb. 484, 58 N. W. 1016, 42 Am. St. Rep. 683, 24 L. R. A. 444.

[63] Salazar v. Taylor, 18 Colo. 538, 33 Pac. 369; Belford v. Beatty, 145 Ill. 414, 34 N. E. 254.

[64] Roberts v. Snow, 27 Neb. 425, 43 N. W. 241; Wilson v. Campbell, 110 Mich. 580, 68 N. W. 278; Holingshead v. Stuart, 8 N. D. 35, 77 N. W. 89, 42 L. R. A. 659.

[65] Bowie v. Hall, 69 Md. 433, 16 Atl. 64, 9 Am. St. Rep. 433, 1 L. R. A. 546; Bank of Commerce v. Fuqua, 11 Mont. 285, 28 Pac. 291, 28 Am. St. Rep. 461, 14 L. R. A. 588. As to validity of agreement to pay attorney's fees, see 55 Am. St. Rep. 438-441, 444; see also notes 7 L. R. A. 445, 1 L. R. A. 547, 3 L. R. A. 51.

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"(4) With exchange, whether at a fixed rate or at the current rate; or

"(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity."[66]

§ 49. Must be certain as to time of payment. The instrument must be payable without conditions and at all events in order to be negotiable.[67]

If the order or promise be payable provided terms mentioned are complied with; as, for instance, that a certain receipt be produced by a certain time,[68] it is not a negotiable bill or note; and likewise if payable provided a certain ship shall arrive;[69] or provided the maker shall live a certain time,[70] or upon any contingency. *"An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect."*[71]

If the time must certainly come, although the particular day is not mentioned, the instrument is regarded as negotiable, as the fact of payment is certain. If the instrument is payable at, or within a certain time after, a man's death, it is sufficient, because the event must occur.[72] *"An instrument is payable at a determinable future time within the meaning of this act, which is expressed to be payable:*

"(1) At a fixed period after date or sight; or

"(2) On or before a fixed or determinable future time specified therein; or

"(3) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening be uncertain."[73]

In a few decisions a note or bill made payable "on or before"

merce v. Feeney, 9 S. D. 550, 70 N. W. 874, 46 L. R. A. 732.

[66] Neg. Inst. Law, § 21 (2), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[67] Harrell v. Marston, 7 Rob. (La.) 34; New Windsor First Nat. Bank v. Bynum, 84 N. C. 24, 37 Am. Rep. 604; Mahoney v. Fitzpatrick, 133 Mass. 151, 43 Am. Rep. 502.

[68] Mason v. Metcalf, 4 Baxt. (Tenn.) 440.

But see, Kirkwood v. First Nat. Bank, 40 Neb. 484, 58 N. W. 1016, 42 Am. St. Rep. 683, 24 L. R. A. 444.

[69] Grant v. Wood, 12 Gray. (Mass.) 220; The Lykus, 36 Fed. 919.

[70] Kelley v. Hemmingway, 13 Ill. 604; Rice v. Rice, 43 N. Y. App. Div. 458, 60 N. Y. S. 97.

[71] Neg. Inst. Law, § 23 (4), last part, where all cases directly or indirectly bearing upon or citing the Law are grouped.

[72] Garrigus v. Home Frontier etc. Missionary Society, 3 Ind. App. 91, 28 N. E. 1009, 50 Am. St. Rep. 262; Hegeman v. Moon, 131 N. Y. 462, 30 N. E. 487; Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845.

[73] Neg. Inst. Law, § 23 (4), where all cases directly or indirectly

a stated date has been held non-negotiable, but the great majority of decisions declare such an instrument to be negotiable, since the legal rights of the holder are clear and certain, and the instrument being due at a time fixed and not before, the maker has a mere option to pay in advance of the legal liability if he sees fit.[74]

If a bill or note is made payable expressly or impliedly out of a particular fund it is not negotiable according to the law merchant, because there may be no such fund.[75] *"An unqualified order or promise to pay is unconditional, though coupled with an indication of a particular fund out of which reimbursement is to be made, or a particular account is to be debited with the amount. But an order or promise to pay out of a particular fund is not unconditional."*[76]

§ 50. Must be certain as to place of payment. The purpose of a certain place of payment being set out in the instrument is to fix the place at which the holder must present the bill of exchange or note for payment. This is a very important feature of the instrument when we come to consider the liability of sureties and indorsers. If no place is mentioned, presentment must be made at the place of business of the primary obligor.[77] If he has no place of business, presentment must then be made at his residence.[78] Another purpose of having a certain place of payment set out in the instrument is to determine what law shall govern as to the condition and manner of payment. As a general rule it is not necessary to the negotiability of the instrument that a place of payment be designated.[79] But it is now required by statute in some of the states.

The Negotiable Instruments Law provides that *"the validity and negotiable character of an instrument are not affected by the*

bearing upon or citing the Law are grouped.

[74] Walker v. Woolen, 54 Ind. 164; Noll v. Smith, 64 Ind. 511, 31 Am. Rep. 131; Charlton v. Reed, 61 Iowa, 166, 16 N. W. 64, 47 Am. Rep. 808; Ernst v. Steckman, 74 Pa. St. 13, 15 Am. Rep. 542. See also note 11 L. R. A. 748.

[75] Turner v. Peoria etc. Ry. Co., 95 Ill. 134, 35 Am. Rep. 144; Miller v. Poage, 56 Ia. 96, 8 N. W. 799, 41 Am. Rep. 82; Thompson v. Wheatland Mercantile Co., 10 Wyo. 86, 66 Pac. 595. As to reference to account or fund as affecting negotiability, see note 8 L. R. A. (N. S.) 231; see also notes 35 L. R. A. 647 and 22 U. S. L. Ed. 161.

[76] Neg. Inst. Law, § 22 (3), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[77] Biglow v. Kellar, 6 La. Ann. 59, 54 Am. Dec. 555; Merrick v. Burlington etc. Plank Road Co., 11 Ia. 74; Haber v. Brown, 101 Cal. 445, 35 Pac. 1035.

[78] Stivers v. Prentice, 3 B. Mon. (Ky.) 461; Shamburgh v. Cemmagere, 10 Mart. (La.) 18; Packard v. Lyon, 5 Duer. (N. Y.) 82.

[79] Kendall v. Galvin, 15 Me. 131,

fact that it does not specify the place where it is drawn or the place where it is payable."[80]

§ 51. Must be payable in money. Another essential requisite of a bill of exchange or promissory note is that the medium of payment must be money; that is, the direction or promise in such instrument must be to pay in money.[81] If the instrument calls for the payment of goods, or is in the alternative, as for the payment of a sum of money or "to issue stock," it is not negotiable and becomes a mere simple contract.[82] So if the instrument be expressed to be payable "in work,"[83] or in any other article than money, as, for instance, "an ounce of gold,"[84] it becomes a special contract, and by the law merchant loses its character as commercial paper. Thus it has been held that if the instrument be to pay money, and also "to deliver up horses and a wharf,"[85] or "to pay money and take up a certain outstanding note," it is not a negotiable note.[86]

But it is held that *"an unqualified order or promise to pay is unconditional though coupled with a statement of the transaction which gives rise to the instrument."*[87]

So also an instrument in terms and form a negotiable promissory note does not lose that character because it recites that the maker has deposited collateral security for its payment, which he agrees may be sold in a specified manner.[88] Thus it seems well settled that, although it may appear on the face of the note that its payment is secured by collaterals in personal property, or mortgage of real property, yet if otherwise in proper form, it is negotiable.

32 Am. Dec. 141; Spears v. Bond, 79 Mo. 467.

[80] Neg. Inst. Law, § 25 (6), sub. div. 3, where all cases directly or indirectly bearing upon or citing the Law are grouped.

[81] Killan v. Schoeps, 26 Kan. 310, 40 Am. Rep. 313; Johnson v. Griest, 85 Ind. 503; Chandler v. Calvert, 87 Mo. App. 368. As to payment in money only, see note 3 L. R. A. 50.

[82] Pridgen v. Cox, 9 Tex. 367; Hodges v. Shuler, 22 N. Y. 114; Corbitt v. Stonemetz, 15 Wis. 170; Markley v. Rhodes, 59 Ia. 57, 12 N. W. 775.

[83] Bothick v. Purdy, 3 Mo. 82; McClelland v. Coffin, 93 Ind. 456; Ransom v. Jones, 2 Ill. 291.

[84] Roberts v. Smith, 58 Vt. 492, 4 Atl. 709, 56 Am. Rep. 567.

[85] Martin v. Chantry, 2 Strange, 1271.

[86] Cook v. Satterlee, 6 Cow. 108. But see, Hodges v. Shuler, 22 N. Y. 114.

[87] Neg. Inst. Law, § 22 (3), subd. 2, where all cases directly or indirectly bearing upon or citing the Law are grouped.

[88] Valley Nat. Bank v. Crowell, 148 Pa. St. 284, 23 Atl. 1068, 33 Am. St. Rep. 824; De Hass v. Dibert, 70 Fed. 227, 17 C. C. A. 79, 30 L. R. A. 189; Carroll Bank v. Taylor, 67 Ia. 572, 25 N. W. 810.

The Negotiable Instruments Law covers this and many similar provisions by the following section:

"An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

"(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

"(2) Authorizes a confession of judgment if the instrument be not paid at maturity; or

"(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or

"(4) Gives the holder an election to require something to be done in lieu of payment of money.

"But nothing in this section shall validate any provision or stipulation otherwise illegal."[89]

It is uniformly held that a power of attorney to confess judgment must be strictly construed, and whether the power can be executed for the benefit of a holder of a note other than the payee must depend upon the language of the power itself.[90] If the note is in itself perfect, without conditions, it may remain negotiable although the power of the attorney to confess judgment may not, by its terms, operate in favor of an indorsee or transferee of the note.[91]

"The validity and negotiable character of an instrument are not affected by the fact that it does not specify the value given, or that any value has been given therefor. But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument."[92]

Thus it is often required when notes are given for a patent or some right therein that the instrument should state the nature of the consideration. *"A promissory note or other negotiable instrument, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented, must contain the words, 'given for a patent right,' prominently and legibly written or printed on the face of such note or instrument*

[89] Neg. Inst. Law, § 24 (5), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[90] Cushman v. Welsh, 19 Ohio St. 536; Manufacturers and Mechanics Bank v. St. John, 5 Hill (N. Y.) 497; Spence v. Emerine, 46 Ohio St. 433, 21 N. E. 866, 15 Am. St. Rep. 634; Marsden v. Soper, 11 Ohio St. 503.

[91] Osborn v. Howley, 19 Ohio 130.

[92] Neg. Inst. Law, § 25 (6), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to a note not indicating the nature of its consid-

above the signature thereto; and such note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder; but this section does not apply to a negotiable instrument given solely for the purchase price or the use of a patented article."[93]

The term money properly includes all legal tender.[94] Though the word "currency" includes bank-notes, which are not legal tender, yet it is held that certificates of deposit, notes, bills, bonds, checks and the like, payable in "currency," or in "current funds of this state," "current Ohio bank-notes," etc., constitute good commercial paper, and are really payable in money, as the term used is but a common expression used to indicate current legal tender.[95]

The property of being legal tender is not necessarily inherent in money; it generally belongs no more to inferior coin than to paper money. Legal tender is that kind of money which the law compels a creditor to accept in payment of his debt, when tendered by the debtor in the right amount.[96] Foreign gold or silver coins are not legal tender.[97] The gold and silver coins of the United States and United States notes are lawful money and legal tender in the payment of all debts, public and private.[98]

"The validity and negotiable character of an instrument are not affected by the fact that it designates a particular kind of current money in which payment is to be made."[99]

But if the instrument is made payable in the paper or currency of a particular bank, specifically and absolutely, and without reference to the currency or value of the paper, it is held not to be for the payment of money and is not negotiable.[1]

It has been held that it is necessary that the instrument should express the specific denomination of money when it is payable in the money of a foreign country, in order that the courts may

eration as required by statute see note 10 L. R. A. (N. S.) 842.

[93] Neg. Inst. Law, § 330, where all cases directly or indirectly bearing upon or citing the Law are grouped.

[94] Jones v. Overstreet, 4 T. B. Mon. (Ky.) 547; Mann v. Mann, 1 Johns Ch. (N. Y.) 236.

[95] Telford v. Patton, 144 Ill. 611, 33 N. E. 1119; Butler v. Paine, 8 Minn. 324; Phelps v. Town, 14 Mich. 374; ("Current Ohio Bank Notes"); Swetland v. Creigh, 15 Ohio 118; Bull v. Bank, 123 U. S. 105. There is much conflict on the above point, however.

[96] Black's Law Dic.; Martin v. Bolt, 17 Ind. App. 444, 46 N. E. 151.

[97] United States Revised Statutes, § 3584.

[98] United States Revised Statutes, § 3585.

[99] Neg. Inst. Law, § 25 (6), subd. 5 and cases there cited.

[1] Bonnell v. Covington, 7 How. (Miss.) 322; Whiteman v. Childress, 6 Humph. (Tenn.) 303; Fry v. Rousseau, 3 McLean (U. S.)

be able to ascertain its equivalent value; otherwise it is not negotiable.[2]

Where an instrument is made payable generally in the money of a foreign country, without specifying the kind or denomination of the coin or money, so that payment may be made in our own coin of equivalent value as determined by the par of exchange, it is not negotiable, according to a leading case in New York upon this question.[3] This is not the invariable rule, for in a Michigan case a note payable in "Canada currency" was held negotiable, and the New York case already referred to was disapproved.[4]

§ 52. **Must be necessary parties.** The name of the maker of a note or the drawee of a bill should appear on the instrument. In the case of the note it is important, as it is the maker who is liable thereon;[5] and in case of the bill the drawee's name must be written in order to bind the party accepting.[6]

The bill must be addressed to some person, except that:

(a) If the drawee can be otherwise sufficiently identified from the bill it is sufficient; and[7]

(b) An unaddressed bill accepted or a bill accepted, where the drawer and acceptor are one and the same person, probably is to be treated as a promissory note, and is negotiable.[8]

The bill or note must point out some person to whom the money is to be paid.[9]

The following are the common rules concerning the nomination of payees:

(a) The payee of an instrument, except one payable to bearer, must be a person in being, natural or legal, and ascertained, at the time of issue.[10]

106, 9 Fed. Cas. No. 5,141; Mitchell v. Walker, 4 Ark. 145.

[2] Thompson v. Sloan, 23 Wend. (N. Y.) 71. But see Hogue v. Williamson, 85 Tex. 553, 22 S. W. 580, 34 Am. St. Rep. 823, 20 L. R. A. 481; Black v. Ward, 27 Mich. 193, 15 Am. Rep. 162.

[3] Thompson v. Sloan, 33 Wend. (N. Y.) 71.

[4] Black v. Ward, 27 Mich. 193, 15 Am. Rep. 162.

[5] Union Nat. Bank v. Forstall, 41 La. Ann. 113, 6 So. 32; Keck v. Sedalia Brewing Co., 22 Mo. App. 187; Ferris v. Bond, 4 B. & Ald. 679, 23 Rev. Rep. 443, 6 E. C. L. 651.

[6] Funk v. Babbitt, 156 Ill. 408, 41 N. E. 166; Watrous v. Holbrook, 39 Tex. 572; McPherson v. Johnston, 3 Brit. Col. 465.

[7] Ala. Coal Min. Co. v. Brainard, 35 Ala. 476; Culver v. Marks, 122 Ind. 554, 23 N. E. 1086, 17 Am. St. Rep. 377, 7 L. R. A. 489; Rice v. Ragland, 10 Humph. (Tenn.) 545, 53 Am. Dec. 737.

[8] Bliss v. Burnes, McCahon (Kan.) 91; Funk v. Babbitt, 156 Ill. 408, 41 N. E. 166.

[9] Brown v. Gilman, 13 Mass. 158; Secy. v. State Bank, 3 Sneed (Tenn.) 558, 67 Am. Dec. 579.

[10] Wayman v. Torreyson, 4 Nev. 124; U. S. v. Coffeyville First Nat.

(b) Where the payee and maker or drawer are the same person, the instrument is not issued until after its indorsement and delivery.[11]

(c) The payee may be a fictitious or non-existing person, but the instrument is then construed as payable to bearer, and title thereto is made by estoppel.[12]

"A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession."[13]

"Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note."[14]

"The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit."[15]

A bill or note may be executed by one person or by a number of persons. When executed by but one, it is called a several note. When executed by two or more, it is either joint, or joint and several, according to its wording. Thus, if in a note signed by two or more, the plural number is used in referring to them as "we promise to pay," it is held to be a joint note.[16] While if in the same note the singular number is used, as "I promise to pay," then the note is considered as joint and several, since this expression indicates an intention to make it a joint

Bank, 82 Fed. 410; New v. Walker, 108 Ind. 365, 9 N. E. 386, 58 Am. Rep. 40; Eddy v. Bond, 19 Me. 461, 36 Am. Dec. 767.

[11] Norfolk Nat. Bank v. Griffin, 107 N. C. 173, 11 S. E. 1049, 22 Am. St. Rep. 868; Ewan v. Brooks-Waterfield Co., 55 Ohio St. 596, 45 N. E. 1014, 60 Am. St. Rep. 719, 35 L. R. A. 786.

[12] Kohn v. Watkins, 26 Kan. 691, 40 Am. Rep. 336; Shaw v. Brown, 128 Mich. 573, 87 N. W. 757; Phillips v. Mercantile Nat. Bank, 140 N. Y. 556, 35 N. E. 982, 37 Am. St. Rep. 596, 23 L. R. A. 584.

[13] Neg. Inst. Law, § 212 (128), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[14] Neg. Inst. Law, § 214 (130), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[15] Neg. Inst. Law § 215 (131), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[16] Harrow v. Dugan, 6 Dana (Ky.) 341; Lafourche Transp. Co. v. Pugh, 52 La. Ann. 1517, 27 So. 958; Peaks v. Dexter, 82 Me. 85, 19 Atl. 100.

and several note.[17] So the expression, "we or either of us," is held to make a note joint and several.[18]

§ 53. The delivery. By the Negotiable Instruments Law *"delivery means transfer of possession, actual or constructive, from one person to another."*[19]

An undelivered bill or note is inoperative, because delivery is essential to the final completion of every written contract. Until delivery, the contract is revocable. Delivery means transfer of possession with intent to transfer title, and is of two kinds: (1) The manual passing of the instrument itself; and (2) some act manifesting intent to transfer right of possession while the possession of the instrument is actually with another.

"Where an instrument has not been delivered it will not if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery."[20]

"Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved."[21]

By depositing a note in the mail with the intent that it shall be transmitted to the payee in the usual way, the maker parts

[17] Dow Law Bank v. Godfrey, 126 Mich. 521, 85 N. W. 1075, 86 Am. St. Rep. 559; Warren First Nat. Bank v. Fowler, 36 Ohio St. 524, 38 Am. Rep. 610.

[18] Pogue v. Clark, 25 Ill. 333; Harvey v. Irvine, 11 Ia. 82; Harris v. Coleman etc. White Lead Co., 58 Ill. App. 366.

[19] Neg. Inst. Law, § 2 (191), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to delivery, see note 37 Am. St. Rep. 458, 459; see also note 6 L. R. A. 470.

[20] Neg. Inst. Law, § 34 (15), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[21] Neg. Inst. Law, § 35 (16), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to stolen paper see note 13 U. S. L. Ed. 266.

with his dominion and control over it and the delivery is, in legal contemplation, completed.[22]

§ 54. Value received. Value received is not necessary to be expressed in a negotiable instrument.[23] Although these words are well nigh universal in negotiable bills and notes, they are in no wise necessary to them. Their omission is unimportant, because the negotiable instrument itself imports a consideration.[24]

"The validity and negotiable character of an instrument are not affected by the fact that it does not specify the value given, or that any value has been given therefor." [25]

§ 55. As to the agreement controlling the operation. There are two kinds of agreements which control the operation of bills and notes, which are designated as a memoranda on the face or back of the instrument[26] and collateral or independent agreements.[27] The advantage of having a memorandum on the bill or note is that it will furnish actual or constructive notice to all subsequent holders, whereby it will control the operation or character of the instrument,[28] whereas a collateral agreement can only control the operation or character of the instrument as to those parties who have received actual notice of its existence. Only such memorandum as does actually affect the character and control the operation of the instrument will be considered to be a part of the bill or note.

Nor can the memorandum be treated as a part of the bill or note where it is so ambiguous and repugnant to the other contents that parol evidence is necessary to explain its import, or where the agreement is repugnant to the assignment or transfer of the instrument.[29] Where the memorandum is added to the

[22] Canterbury v. Sparta Bank, 91 Wis. 53, 64 N. W. 311, 51 Am. St. Rep. 870, 30 L. R. A. 845; Kirkman v. Bank of America, 2 Coldw. (Tenn.) 397; Buehler v. Galt, 35 Ill. App. 225.

[23] Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845; Hubble v. Fogartie, 3 Rich. (S. C.) 413, 45 Am. Dec. 775; Clarke v. Marlow, 20 Mont. 249, 50 Pac. 713. See note 12 L. R. A. 846.

[24] Jones v. Berryhill, 25 Ia. 289; Kendall v. Galvin, 15 Me. 131, 32 Am. Dec. 141; Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845.

[25] Neg. Inst. Law, § 25 (6), subd. 2, where all cases directly or indirectly bearing upon or citing the Law are grouped.

[26] Specht v. Beindorf, 56 Neb. 553, 76 N. W. 1059, 42 L. R. A. 429; Nat. Bank of Commerce v. Feeney, 12 S. D. 156, 80 N. W. 186, 76 Am. St. Rep. 594, 46 L. R. A. 732.

[27] Babbitt v. Moore, 51 N. J. L. 229, 17 Atl. 99; Wood v. Ridgville College, 114 Ind. 320, 16 N. E. 619; Murphy v. Farley, 124 Ala. 279, 27 So. 442; Wooters v. Foster, 1 Tex. App. Civ. Cas. 700.

[28] Wait v. Pomeroy, 20 Mich. 425, 4 Am. Rep. 345; Farmers Bank v. Ewing, 78 Ky. 264, 39 Am. Rep. 231.

[29] Way v. Batchelder, 129 Mass. 361; Leland v. Parriott, 35 Ia. 454.

bill or note after its negotiation, with the consent of both parties, it will constitute a part of the instrument, controlling its operation, but if it is added without the consent of all the parties, it will be an alteration which will invalidate the bill or note.[30] Collateral agreements entered into contemporaneously with the execution and negotiation of the instrument must be in writing in order to be valid and control the operation of such bill or note.[31] Subsequent agreements which change the terms of bills and notes already delivered must be based upon a sufficient consideration and be fully executed or performed in order to control the operation of the instrument as to all parties who have notice of the collateral agreement.[32] The most common collateral agreement is that of renewing the bill or note. If the renewal is contemporaneous with the instrument it must be in writing; and if subsequent it must be supported by a sufficient consideration.[33]

A note which contains a statement to the effect that the maker has deposited collateral security for its payment does not thereby lose its character of negotiability nor does the fact that a note is received with collaterals affect such negotiability.[34]

§ 56. Days of grace. As to days of grace the Negotiable Instruments Law provides:[35]

"Every negotiable instrument is payable at the time fixed therein without grace."

Where such law is not in force grace is a short period of time, extended by the written law to instruments not payable on demand,[36] to enable the parties to provide payment. It arose before the age of steam, when communication was slow and often difficult. It is said to have been a mere matter of indulgence at first, at the holder's election. The rule is peculiar to the law merchant; and since the reason for it has mostly ceased, it has been abolished by statute in most jurisdictions.

Days of grace are days added to the nominal time of payment

[30] Tuckerman v. Hartwell, 3 Me. 147, 14 Am. Dec. 225.

[31] Noell v. Gains, 68 Mo. 649; Polo Mfg. Co. v. Parr, 8 Neb. 379, 30 Am. Rep. 830.

[32] Dow v. Tuttle, 4 Mass. 414, 3 Am. Dec. 226; Allen v. Furbish, 4 Gray 504, 64 Am. Dec. 87.

[33] Lime Rock Bank v. Mallett, 34 Me. 547, 56 Am. Dec. 673; Central Bank v. Willard. 17 Pick. 150, 28 Am. Dec. 284.

[34] Gilford v. Minneapolis etc. Ry. Co., 48 Minn. 560, 51 N. W. 658, 31 Am. St. Rep. 694; Valley Bank v. Crowell, 148 Pa. St. 284, 23 Atl. 1068, 33 Am. St. Rep. 824.

[35] Neg. Inst. Law, § 145 (85), where all cases directly or indirectly bearing upon or citing the Law are grouped. See also notes 5 U. S. L. Ed. 215 and 6 U. S. L. Ed. 512.

[36] Davenport First Nat. Bank v.

of all bills or notes except those impliedly or expressly payable on demand, and are computed by excluding the day of date and including the day of payment.[37] When granted at all they are usually for three days. But as stated above days of grace have been abolished by statute in many jurisdictions.

§ 57. **As to stamps.** It seems that the first stamp duties were those levied by Holland in 1624 for the purpose of raising revenues for the prosecution of war against Spain. The first stamp duties levied in England were in 1694 and were employed to wage war against France. Some of the states of the Union have at different periods passed an Act imposing stamp duties on certain negotiable instruments. The first Act of a similar nature passed by the Federal Government was in 1862 during the war of the rebellion.[38] This Act imposed a tax upon deeds, bills, notes, checks and other evidences of indebtedness.[39]

This act was subsequently repealed from which time no stamp duties on these instruments were required until 1898 when the War Revenue Act was passed. This act imposed a stamp tax upon bills of exchange, promissory notes, money orders, certificates of deposit, warehouse receipts, bills of lading and other evidences of indebtedness. In 1901 this act was repealed except as to bills of exchange and in 1902 it was repealed as to these.

§ 58. **As to blanks.** Frequently bills of exchange and promissory notes are executed in blank and delivered to another to fill in and negotiate, either for his own benefit or that of the maker. The person to whom these instruments are delivered in blank with authority to fill the blanks is constituted the agent of the maker or principal.[40] There is no need of a second delivery by the maker after the blanks have been filled because the validity of the paper after its completion will relate back to the delivery by the maker or drawer. It may be, however, that the authority of the person to whom the instrument is delivered is limited to filling the blanks in a particular way, and in such case, if he exceeds his express authority, of course neither he nor any holder, with knowledge that the authority has been exceeded, can re-

Price, 52 Ia. 570, 3 N. W. 639; Thompson v. Ketchum, 8 Johns. (N. Y.) 190, 5 Am. Dec. 332.

[37] Thomas v. Shoemaker, 6 Watts (Pa.) 179; Tassell v. Lewis, 1 Ld. Raym. 743.

[38] U. S. Rev. Stat. at L. 432.

[39] Jones v. Jones, 38 Cal. 584; Merchants Nat. Bank v. Boston etc. Bank, 10 Wall. (U. S.) 604, 19 L. Ed. 1008; Pugh v. McCormick, 14 Wall. (U. S.) 361, 20 L. Ed. 789.

[40] Radlich v. Dall, 54 N. Y. 234; Winter v. Poole, 104 Ala. 580, 16 So. 543; Market etc. Nat. Bank v. Sargent, 85 Me. 349, 27 Atl. 192, 35 Am. St. Rep. 376. See also note 1 L. R. A. 648.

cover.[41] But any one purchasing the instrument as filled in, in reliance upon its terms, would be protected. Moreover, a *bona fide* purchaser is protected, and may enforce the instrument as filled in even if he had knowledge that the instrument had been delivered in its imperfect state, for he may rely upon the apparent authority of the person to whom it was delivered to fill in the blanks as he sees fit, and as against such a holder the fact that the actual authority was exceeded is no defense.[42]

The Negotiable Instruments Law states:

"Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time."[43]

§ 59. As to instruments bearing a seal. The mere attaching a seal to the instrument does not necessarily make it a sealed instrument. In addition to this there must be some reference in the instrument, itself, to the seal to bring it within the purview of sealed instruments.[44]

"The validity and negotiable character of an instrument are not affected by the fact that it bears a seal."[45]

§ 60. The several parts of a foreign bill called a set. The following is a common form of foreign bill of exchange in a set:

[41] Clower v. Wynn, 59 Ga. 246; Wagner v. Deidrich, 50 Mo. 484; McCoy v. Gilmore, 7 Ohio 268.

[42] Farmers Bank v. Garten, 34 Mo. 119; Merritt v. Boyden, 191 Ill. 136, 60 N. E. 907, 85 Am. St. Rep. 246; Market etc. Bank v. Sargent, 85 Me. 349, 27 Atl. 192, 35 Am. St. Rep. 376. See notes 16 U. S. L. Ed. 323 and 13 L. R. A. (N. S.) 490.

[43] Neg. Inst. Law, § 33 (14), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[44] Woodman v. York etc. Ry. Co., 50 Me. 549; Royal Bank v. Grand Junction Ry. etc. Co., 100 Mass. 444, 97 Am. Dec. 115. As to effect of seal see note 35 L. R. A. 605.

[45] Neg. Inst. Law, § 25 (6), subd. 4, where all cases directly or indirectly bearing upon or citing the Law are grouped.

£300

Troy, N. Y., U. S. A., August 31, 1908.

First. Exchange for London.

Thirty days after sight of the First of Exchange (Second and Third Unpaid) pay to the order of JOHN BALES Three Hundred Pounds Sterling, value received and charge the same to account of

ORNAN BARKER.

To Green & Co.,
London, Eng.

£300

Troy, N. Y., U. S. A., August 31, 1908.

Second. Exchange for London.

Thirty days after sight of this Second of Exchange (First and Third Unpaid) pay to the order of JOHN BALES Three Hundred Pounds Sterling, value received, and charge the same to account of

ORNAN BARKER.

To Green & Co.,
London, Eng.

£300

Troy, N. Y., U. S. A., August 31, 1908.

Third. Exchange for London.

Thirty days after sight of this Third of Exchange (First and Second Unpaid) pay to the order of JOHN BALES Three Hundred Pounds Sterling, value received, and charge the same to account of

ORNAN BARKER.

To Green & Co.,
London, Eng.

In order to avoid delay and inconvenience which may result from the loss or miscarriage of a foreign bill, it is a common custom, particularly in bills drawn on Europe and other distant countries, for the drawer to issue several copies of the bill as above, which are called a set of exchange, and together constitute one bill.

"Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill."[46]

[46] Neg. Inst. Law, § 310 (178), where all cases directly or indirectly bearing upon or citing the Law are grouped.

Either copy of the bill may be negotiated, and when any one of them is accepted and paid, all others are extinguished, even against *bona fide* purchasers, so far as the drawer is concerned, although the payee is liable to each person, to whom he has transferred a copy of the bill.[47] The drawee should accept only one of the copies, and pay the amount of the bill, when the part which he has accepted is presented for payment. If he accepts more than one copy, he will be liable to *bona fide* purchasers on as many copies on which he has written his acceptance.[48] But any copy may be presented for acceptance, and the drawee may accept any copy.

"Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him."[49]

"Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if such parts were separate bills."[50]

"The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill."[51]

"When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon."[52]

"Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged."[53]

[47] Riggin v. Collier, 6 Mo. 568; Yale v. Ward, 30 Tex. 17.

[48] Wright v. McFall, 8 La. Ann. 120; Holdsworth v. Hunter, 10 B. & C. 449.

[49] Neg. Inst. Law, § 311 (179), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[50] Neg. Inst. Law, § 312 (180), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[51] Neg. Inst. Law, § 313 (181), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[52] Neg. Inst. Law, § 314 (182), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[53] Neg. Inst. Law, § 315 (183), where all cases directly or indirectly bearing upon or citing the Law are grouped.

CHAPTER VII.

CONSIDERATION OF NEGOTIABLE INSTRUMENTS.

§ 61. Meaning of term.
62. Consideration in general.
63. Necessity of consideration.
64. Presumption of consideration.
65. Sufficiency of consideration.
66. Inadequacy of consideration.
67. Illegal, immoral, and fraudulent considerations.
§ 68. Want or failure of consideration.
69. Between whom question of consideration may be raised.
70. As to accommodation paper.

§ 61. Meaning of term. In general, consideration means inducement to a contract, that is, the cause, motive, price or impelling influence which induces a contracting party to enter into a contract. It means the reason or material cause of a contract.[1]

That is, by consideration is meant a benefit or gain of some kind to the party making the promise, or a loss, detriment or injury of some kind to the party to whom the promise is made.[2]

§ 62. Consideration in general. The Negotiable Instruments Law provides:

"Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time."[3]

Valuable consideration may, "in general terms, be said to consist either in some right, interest, profit or benefit, accruing to the party who makes the contract, or some forbearance, detriment, loss, responsibility, or act, or labor, or service, on the other side. And, if either of these exists, it will furnish a sufficient valuable consideration to sustain the making or indorsing of a promissory note in favor of the payee or other holder."[4]

In general a valuable consideration as applied to the law of

[1] Roberts v. City of New York, 5 Abb. Prac. 41, 49; Streshley v. Powell, 51 Ky. (12 B. Mon.) 178, 180.

[2] Eastman v. Miller, 113 Ia. 404, 85 N. W. 635; St. Marks Church v. Teed, 120 N. Y. 583, 24 N. E. 1014, 1015; Chicora Fert. Co. v. Dunan, 91 Md. 144, 46 Atl. 347, 50 L. R. A. 401.

[3] Neg. Inst. Law, § 51 (25), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to antecedent debt as consideration, see note 1 Am. St. Rep. 136.

[4] Story on Promissory Notes, § 186; Currie v. Misa, L. R. 10 Exch. 153, 162.

commercial paper is any consideration sufficient to support a simple contract. Thus a cross acceptance,[5] the forbearance of a debt of a third person,[6] the compromise of a disputed liability[7] or a debt barred by the statute of limitations,[8] are held to constitute a valuable consideration.

Where a person has a valid and subsisting right or interest in property, a waiver or release thereof is a sufficient consideration for a promissory note made to such person.[9]

If a claim is clearly illegal and unfounded and no proceedings have been instituted thereon, a note given in settlement thereof is however without consideration.[10] If there be any reasonable doubt about the validity of the claim, a compromise thereof is a sufficient consideration for a note, and in an action on such a note the invalidity of the claim compromised cannot be asserted.[11] Ignorance of the maker's rights in respect to an alleged liability will not affect the validity of a note given on account of such liability.[12] A note given by the treasurer of a corporation in consideration of the discharge of a disputed claim against such corporation is valid.[13]

The Negotiable Instruments Law provides, as above set out, that an antecedent or pre-existing debt will be a valuable consideration in support of a bill or note when the bill is received in absolute payment of the original debt, yet if received for nothing but a conditional payment, the holder's rights will be determined by a subsequent rule governing bills taken as collateral security. A promissory note given by the maker, in exchange for a promissory note given by the payee, is for a valuable consideration, and is in no sense an accommodation paper, although made for the mutual accommodation of the parties.[14] A consideration founded on love and affection, as that naturally existing between husband and wife, father and son, etc., or upon gratitude, is known as a good consideration, as distinguished from a valuable

[5] Backus v. Spalding, 116 Mass. 418; Dockray v. Dunn, 37 Me. 442.

[6] Thompson v. Gray, 63 Me. 376; Harris v. Harris, 180 Ill. 157, 54 N. E. 180.

[7] Wyatt v. Evins, 52 Ala. 285; Jones v. Ritterhouse, 87 Ind. 348; Feeter v. Weber, 78 N. Y. 334.

[8] Way v. Sperry, 6 Cush. 238; Giddings v. Giddings, 51 Vt. 227.

[9] Sykes v. Laferry, 27 Ark. 407; Bradbury v. Blake, 25 Me. 397.

[10] Bullock v. Ogden, 13 Ala. 346; Tucker v. Ronk, 43 Ia. 80; Fuller v. Green, 64 Wis. 159, 24 N. W. 907, 54 Am. Rep. 600.

[11] Tyson v. Woodruff, 108 Ga. 368, 33 S. E. 981; Keefe v. Vogle, 36 Ia. 87; Easton v. Easton, 112 Mass. 438.

[12] Bennett v. Ford, 47 Ind. 264; Daily v. Jessup, 72 Mo. 144; Mory v. Laird, 108 Ia. 670, 77 N. W. 835.

[13] National Bank v. Foster, 85 Hun 376, 32 N. Y. S. 1031.

[14] Farber v. National Forge Co., 140 Ind. 54, 39 N. E. 249; Wil-

consideration, and is not of itself sufficient to support the obligation of a bill or note as between the original parties thereto.[15]

A note may be given for services to be rendered, and upon the rendition of the services the consideration becomes complete and will be sufficient to sustain the validity of the note even if the services are not equal in value to the amount of the note. Services rendered out of kindness, and without expectation of reward, although of value, are not a sufficient consideration to support a note.[16] But the consideration is not affected by the fact that the services were rendered without an express promise to pay.[17]

An agreement to marry, which is afterward fulfilled, is a sufficient consideration for a note made by the intended husband.[18]

An agreement or promise to make a gift in the future, not being based upon a valuable consideration, is not enforceable, even when put in the form of a promissory note.[19] A mere moral obligation is not a sufficient consideration to support a promissory note between the parties to such obligation.[20] Forbearance to prosecute a legal claim is a sufficient consideration to support a promissory note.[21]

Receiving a bill or note as security for a debt[22] or forbearance to sue upon a present claim or debt,[23] or the dismissal of a pending suit,[24] or the surrender of a prior valid note,[25] or becoming a surety,[26] or giving an extension of time to an imputed debtor,[27]

liams v. Banks, 11 Md. 198; Backus v. Spalding, 116 Mass. 418.

[15] Fink v. Cox, 18 Johns. (N. Y.) 145, 9 Am. Dec. 191; In re Campbell Estate, 7 Pa. St. 100, 47 Am. Dec. 503; Kern's Estate, 171 Pa. St. 55, 33 Atl. 129.

[16] Miller v. McKenzie, 95 N. Y. 575, 47 Am. Rep. 85; Coe v. Smith, 1 Smith (Ind.) 88; Mitcherson v. Dozier, 7 J. J. Marsh (Ky.) 53, 22 Am. Dec. 116.

[17] Root v. Strang, 77 Hun 14, 28 N. Y. S. 273; Gramwell v. Mosley, 11 Gray 173.

[18] Wright v. Wright, 54 N. Y. 437; Prescott v. Ward, 10 Allen (Mass.) 203; Blanshaw v. Russell, 52 N. Y. S. 963.

[19] Williams v. Forbes, 114 Ill. 167, 28 N. E. 463; Johnston v. Griest, 85 Ind. 503; Ricketts v. Scothorn, 57 Neb. 51, 77 N. W. 365.

[20] Nightingale v. Barney, 4 G. Greene (Ia.) 106; Nash v. Russell, 5 Barb. (N. Y.) 556.

[21] Anstell v. Rice, 5 Ga. 472; Jennison v. Stafford, 1 Cush. (Mass.) 168, 48 Am. Dec. 55; Lavell v. Frost, 16 Mont. 93, 40 Pac. 146.

[22] Youngs v. Lee, 12 N. Y. 551; Bank of Rochester v. Bentley, 27 Minn. 87, 6 N. W. 422; Allaire v. Hartshorne, 21 N. J. L. 665.

[23] Worcester Nat. Bank v. Cheeney, 87 Ill. 602.

[24] Wyatt v. Evins, 52 Ala. 285; Brown v. Ladd, 144 Mass. 310; 10 N. E. 839; Spielberger v. Thompson, 131 Cal. 55, 63 Pac. 132.

[25] Youngs v. Lee, 12 N. Y. 551; Stevens v. Campbell, 13 Wis. 375; Bank of Rochester v. Bentley, 27 Minn. 87, 6 N. W. 422; Whelan v. Swain, 132 Cal. 389, 64 Pac. 560.

[26] Harrell v. Tenant, 30 Ark. 684; Pauly v. Murray, 110 Cal. 13, 42 Pac. 313; Gay v. Mott, 43 Ga. 252.

[27] Brainerd v. Harris, 14 Ohio

or doing any act at the request of the drawer, indorser, or acceptor, will be sufficient consideration for a bill or note. An extension of time upon an indebtedness is sufficient consideration for a promissory note given as collateral therefor.[28]

A fluctuating balance may form a consideration for a bill or note.[29] As where bills or notes are deposited as a security for the balance of an account current, the successive balances form a shifting consideration for the bill or note.[30] But where the account has been settled or transferred prior to the execution of the note, the consideration of course fails, and the note is invalid.[31]

§ 63. The necessity of consideration. By the common law a promise made without consideration was invalid, and in order to enforce any contract, it was necessary to aver and prove a consideration.

The most ancient exception to this rule was made in reference to a promise under seal, the solemn act of the party in attaching a seal to the evidence of his contract being regarded as importing or excusing a consideration and estopping him from denying it. The necessities of trade soon produced another relaxation of the rule; and by the usage and custom of merchants, bills of exchange and promissory notes came to be regarded as *prima facie* evidence of consideration; and peculiar qualities were accorded to them which were possessed by no other securities for debt.

It is presumed that every negotiable instrument was given upon a valuable consideration, and words acknowledging receipt of consideration are not essential to the validity of the paper.

If the instrument sued on is negotiable, it is unnecessary to aver or prove consideration, for it is imported and presumed from the fact that it is a negotiable instrument.[32] But if the paper does not possess the quality of negotiability, it does not, *per se*, import a consideration,[33] and it must be averred and proved,

107, 45 Am. Dec. 525; Ballard v. Burton, 64 Vt. 387, 24 Atl. 769, 16 L. R. A. 664; Whelan v. Swain, 132 Cal. 389, 64 Pac. 560.

[28] Ballard v. Burton, 64 Vt. 387, 24 Atl. 769, 16 L. R. A. 664; Brainard v. Harris, 14 Ohio 107, 45 Am. Dec. 525.

[29] Perse v. Hirst, 10 B. & C. (Eng.) 122; Richards v. Macy, 14 M. & W. (Eng.) 484.

[30] Atwood v. Crowdie, 1 Stark (Eng.) 483.

[31] Johnson v. Mitchell, 14 Colo. 227, 23 Pac. 452; First Nat. Bank v. Henry, 156 Ind. 1, 58 N. E. 1057.

[32] Germania Bank v. Michaud, 62 Minn. 459, 65 N. W. 70, 54 Am. St. Rep. 653, 30 L. R. A. 286; Adams v. Hackett, 27 N. H. 289, 59 Am. Dec. 376; Perot v. Cooper, 17 Colo. 80, 28 Pac. 391, 31 Am. St. Rep. 258.

[33] Bristol v. Warner, 19 Conn. 7; Siddle v. Anderson, 45 Pa. St. 464; Averett v. Booker, 15 Gratt. (Va.) 163, 76 Am. Dec. 203.

unless it be stated on its face that it was given for "value received," or contains some other equivalent expression, in which case it would be *prima facie* evidence of consideration.[34]

As between the immediate parties to a negotiable instrument, an actual, valid and valuable consideration cannot be dispensed with.[35] In such case the presumption as to the validity and value of the consideration only affects the proof; the burden of proof being thereby shifted from the person to whom the instrument is payable to the person who is liable thereon.[36] In seeking to recover on a simple contract, it is a general rule that the plaintiff must allege and prove that the contract was made on a valuable consideration. But to this rule commercial paper is an exception. It would seem then that as between a promisor and a promisee of a promissory note, or the drawer and drawee of a bill of exchange, a lack of legal consideration would be a good defense in an action on such note or bill.[37] As between immediate parties, the ordinary rules of contracts as to consideration prevail, such as that the consideration must be valuable[38] as distinguished from merely good,[39] that it need not be entirely adequate,[40] and that it must not be illegal.[41]

§ 64. Presumption of consideration. Bills of exchange and promissory notes like simple contracts under seal or executed pursuant to a statute, import a consideration.[42] There are some decisions which hold that a non-negotiable instrument does not import a consideration unless it is so declared by stat-

[34] Conrad Seipp Brewing Co. v. McKittrick, 86 Mich. 191, 48 N. W. 1086; Averett v. Brooker, 15 Gratt. 163, 76 Am. Dec. 203; Cowee v. Cornell, 75 N. Y. 91, 31 Am. Rep. 428; Rowland v. Harris, 55 Ga. 141.

[35] Catlin v. Horne, 34 Ark. 169; Roberts v. Million, 17 Ky. L. Rep. 599, 32 S. W. 320; Hildeburn v. Curran, 65 Pa. St. 59.

[36] Stevens v. McLachlan, 120 Mich. 285, 79 Am. Dec. 627; Newton v. Newton, 77 Tex. 508, 14 S. W. 157; Dalrymple v. Wyker, 60 Ohio St. 108, 53 N. E. 713; Perot v. Cooper, 17 Colo. 80, 28 Pac. 391, 31 Am. St. Rep. 258.

[37] Fisher v. Salmon, 1 Cal. 413, 54 Am. Dec. 297; Kelley v. Guy, 116 Mich. 43, 74 N. W. 291; Williams v. Culver, 30 Oreg. 375, 48 Pac. 365.

[38] Irwin v. Lombard Uni., 56 Ohio St. 9, 36 L. R. A. 239, 60 Am. St. Rep. 239, 46 N. E. 63; Holt v. Robinson, 21 Ala. 106; Currie v. Misa, L. R. 10 Exch. 153.

[39] Pierce v. Walton, 20 Ind. App. 66, 53 N. E. 309; Potter v. Gracie, 58 Ala. 313, 29 Am. Rep. 748.

[40] Cowee v. Cornell, 75 N. Y. 91, 31 Am. Rep. 428; Wheelock v. Barney, 27 Ind. 462; Kitchen v. Loudenback, 48 Ohio St. 177, 26 N. E. 979, 29 Am. St. Rep. 540.

[41] Ketchum v. Scribner, 1 Root (Conn.) 95; Parsons v. Randolph, 21 Mo. App. 353; Brisbane v. Lestarjette, 1 Bay (S. C.) 113.

[42] Brown v. Johnson Bros., 135 Ala. 608, 33 So. 683; Byrd v. Bertrand, 7 Ark. 32; Fuller v. Hutchins, 10 Cal. 523, 70 Am. Dec. 746; Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845. See note 5 U. S. L. Ed. 87.

ute.[43] But the majority of cases seem to hold that a non-negotiable instrument also imports a consideration.[44]

In those jurisdictions where it has been held that these instruments import a consideration it is unnecessary to use the words "Value received."[45] If these words are included in the bill or note, the maker's or other person's right to defend on the ground of want of, failure of, or illegality of consideration is not affected.[46]

"Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value."[47]

§ 65. Sufficiency of consideration. Any act of the maker from which the acceptor derives a benefit or from which the maker may sustain any detriment or inconvenience, is a sufficient consideration to support a promise.[48] If there is no fraud in the transaction the fact that the consideration is not equal to the obligation incurred is no defense.[49] In such case if the consideration is not wanting at the time the obligation is incurred and does not fail in any part thereof afterwards, it is sufficient. If that which was given as a consideration for a promissory note is worthless it has been held that the maker cannot avail himself of it as a defense.[50] But if the worthlessness of the thing given in consideration for the note consists in a defect of title it may be used as a defense.[51]

§ 66. Inadequacy of consideration. It is not necessary that the consideration should be adequate to the obligation incurred in order that the parties may be bound.[52] The only essential

[43] Tibbets v. Thatcher, 14 Ind. 86.

[44] Carnwright v. Gray, 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845; Caples v. Branham, 20 Mo. 244, 64 Am. Dec. 183; Arnold v. Sprague, 34 Vt. 402.

[45] Salazar v. Taylor, 18 Colo. 538, 33 Pac. 369; Stacker v. Hewitt, 2 Ill. 207.

[46] Bruyn v. Russell, 60 Hun 290, 14 N. Y. S. 591; Perley v. Perley, 144 Mass. 104, 10 N. E. 726.

[47] Neg. Inst. Law, § 50 (24), and cases there cited.

[48] Holt v. Robinson, 21 Ala. 106, 56 Am. Dec. 240; Holley v. Adams, 16 Vt. 206, 42 Am. Dec. 508.

[49] Miller v. McKenzie, 95 N. Y. 575; 47 Am. Rep. 85; Boggs v. Wann, 58 Fed. 681; Root v. Strange, 77 Hun 14, 28 N. Y. S. 273, 59 N. Y. St. 258; Kitchen v. Loudenback, 48 Ohio St. 177, 26 N. E. 979, 29 Am. St. Rep. 540.

[50] Bryant v. Pember, 45 Vt. 487; Lester v. Webb, 5 Allen (Mass.) 45; Ried v. Prentiss, 1 N. H. 174, 8 Am. Dec. 50.

[51] Frisbie v. Hoffnagle, 11 Johns. (N. Y.) 50; Crawford v. Beard, 4 J. J. Marsh. (Ky.) 187; Scudder v. Andrews, 2 McLean (U. S.) 464, 21 Fed. Cas. No. 12,564.

[52] Anstell v. Rice, 5 Ga. 472; Boggs v. Wann, 58 Fed. 681; Cowee v. Cornell, 75 N. Y. 91, 31 Am. Rep. 428.

element in this respect is that the consideration must be a valuable one.[53] Thus in an action upon a promissory note given as the price of real or personal property, it will not avail as a defense to the note that the property conveyed was inadequate for the amount of the note.[54] The mere fact that a bargain is hard and unreasonable will not induce even a court of equity to interfere. The law presumes that a man is capable of managing his own affairs and the fact as to whether or not his bargains are wise or unwise is not a proper question for either a legal or equitable tribunal. While inadequacy of consideration is not of itself a sufficient ground for either legal or equitable relief yet it may be shown as evidence of fraud. Ordinarily the mere fact of inadequacy of consideration has very little weight, when standing alone, but coupled with other elements tending to show fraud it becomes a very material factor of constructive fraud.[55]

It has been generally held that a note for a patent right which is of no value, either because it is useless or because the patent is void, is without consideration and therefore not enforceable.[56] The fact that the vendor believed, at the time of the sale, that the patent was valid is not material.[57] It should be noticed, in this connection, that an invention which is not useful cannot be patented, and therefore a patent for a useless invention is void. If an invention is useful, in the sense that it may be applied to some practical or beneficial purpose, it is patentable, and the degree of its utility or practical value does not affect the validity of the patent. If there is a valid patent, in this sense, the court will not inquire into the adequacy of the consideration.[58]

§ 67. Illegal, immoral and fraudulent consideration. Where the consideration is illegal in whole or in part it is a defense against the entire note while in the hands of an immediate party or one who is not a *bona fide* holder for value without notice. Common law considerations are illegal which (1) violate the rules of religion or morality, or (2) are such as contravene public policy.[59] Many acts in themselves immoral are made by statute illegal considerations for the support of commercial paper. A

[53] Holt v. Robinson, 21 Ala. 106, 56 Am. Dec. 240; Holley v. Adams, 16 Vt. 206, 42 Am. Dec. 508.

[54] Johnson v. Titus, 2 Hill (N. Y.) 606; Barnum v. Barnum, 8 Conn. 469, 21 Am. Dec. 689; Perley v. Balch, 23 Pick. (Mass.) 283, 34 Am. Dec. 56.

[55] Jones v. Degge, 84 Va. 685, 5 S. E. 799; Green v. Lowry, 38 Ga. 548; Abbe v. Newton, 19 Conn. 20.

[56] Tilson v. Gatling, 60 Ark. 114, 29 S. W. 35; Mooklar v. Lewis, 40 Ind. 1; Rowe v. Blanchard, 18 Wis. 441, 86 Am. Dec. 783.

[57] Lester v. Palmer, 4 Allen (Mass.) 145.

[58] Nash v. Lull, 102 Mass. 60, 3 Am. Rep. 435; Hildreth v. Turner, 17 Ill. 184; Harmon v. Bird, 22 Wend. (N. Y.) 113.

[59] Scott v. Magloughlin, 133 Ill.

note given for future illicit cohabitation is invalid,[60] although if it be given in consideration of past cohabitation it is enforceable.[61] A note by a husband to his wife, upon the promise of the wife to withdraw all opposition to proceedings for divorce instituted by him, is founded upon an illegal consideration.[62]

A distinction is to be made between a consideration simply illegal and one which by statute expressly makes the bill void. In the former case a *bona fide* transferee may recover, though not in the latter.[63]

When the consideration for commercial paper is clearly fraudulent it is a good defense against an immediate party or a remote party unless he is an innocent holder for value.[64] If the instrument is yet in the hands of a party with notice a court of law will compel its surrender, or restrain its negotiation until the question of fraud is settled.[65]

§ 68. Want or failure of consideration. Want or failure of consideration is only a defense as against an immediate party or as against a remote party who is not a holder for value.[66] It is not a defense against a remote holder for value.

As between the original parties to a bill or note want of consideration then is a good defense, and this is so although the words "For value received" are contained in the instrument.[67] This want of consideration may be total or partial; in the former case it affects the entire validity *pro tanto*.[68] So also a failure of consideration is, in most jurisdictions, deemed a valid defense in an action on a note or bill. But there is more difficulty as to a partial failure of consideration; in such a case the rule seems to be that unless the facts are such that the amount to be deducted because of the partial failure can be definitely computed,

33, 24 N. E. 1030; Hamilton v. Scull, 25 Mo. 165, 69 Am. Dec. 460; Powell v. Inman, 52 N. C. 28.

[60] Massey v. Wallace, 32 S. C. 149, 10 S. E. 937; Potter v. Gracie, 58 Ala. 303, 29 Am. Rep. 748.

[61] Brown v. Kinsey, 81 N. C. 245; People v. Hayes, 140 N. Y. 484, 35 N. E. 951.

[62] Sayles v. Sayles, 21 N. H. 312, 53 Am. Dec. 208; Bend v. Bend, 65 Cal. 354, 4 Pac. 229.

[63] Wheeler v. Russell, 17 Mass. 258; Vanmeter v. Spurrier, 94 Ky. 22, 21 S. W. 337; Whitman v. Freese, 23 Me. 185.

[64] Angier v. Brewster, 69 Ga. 362; Hickson v. Early, 62 S. C. 42, 39 S. E. 782; Von Windisch v. Klaus, 46 Conn. 433.

[65] Zeigler v. Beasley, 44 Ga. 56; Moeckly v. Gorton, 78 Ia. 202, 42 N. W. 648; Streissguth v. Kroll, 86 Minn. 325, 90 N. W. 577; King v. Baker, 1 Yerg. 450.

[66] Whitt v. Blount, 124 Ga. 671, 53 S. E. 205; Homer v. Johnston, 5 Miss. (6 How.) 698; Fellers v. Penrod, 57 Neb. 463, 77 N. W. 1085.

[67] Morton v. Stone, 67 N. H. 367, 29 Atl. 845.

[68] Russ Lumber Co. v. Muscupiabe L. & W. Co., 120 Cal. 521, 52 Pac. 995, 65 Am. St. Rep. 186; Journal Printing Co. v. Maxwell, 1 Pennew. (Del.) 511, 43 Atl. 615;

or unless the amount is liquidated or in the nature of a certain debt, such partial failure of consideration will constitute no defense.[69] There are many jurisdictions, however, where a partial failure of consideration is permitted as a valid defense, although the amount be unliquidated,[70] and in some jurisdictions such partial failure is declared a defense by statute.[71]

It is stipulated in the Negotiable Instruments Law that:

"Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise."[72]

§ 69. Between whom question of consideration may be raised. As a general rule the want or failure of consideration can only be raised as between the immediate parties.[73] This question may also be raised as to any purchaser of the instrument who takes it with notice of such want or failure of the consideration,[74] unless he acquires title from a *bona fide* purchaser for value. In the case of the indorsement of an instrument the question of consideration for the indorsement may be raised as between the indorser and indorsee.[75] In a bill of exchange the want or failure of consideration may be shown in an action brought by the payee against the drawer, by the indorsee against the payee, or by the drawer against the acceptor, but not in an action between the payee and acceptor.[76]

§ 70. As to accommodation paper. The following provision is found in the Negotiable Instruments Law:

"An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value notwithstanding such holder at the time of taking

Wadsworth v. Smith, 10 Shep. (Me.) 500; Brown v. Roberts, 90 Minn. 314, 96 N. W. 793.

[69] Pulsifer v. Hotchkiss, 12 Conn. 234; Allen v. Bank of U. S., 20 N. J. L. 620; Lloyd v. Jewell, 1 Me. 352, 10 Am. Dec. 73.

[70] Wentworth v. Dows, 117 Mass. 14.

[71] Schuchman v. Knoebel, 27 Ill. 175; Webster v. Parker, 7 Ind. 185; Martin v. Iron Works, Fed. Cas. No. 9,157.

[72] Neg. Inst. Law, § 54 (28), and cases there cited.

[73] Wynne v. Whisenant, 37 Ala. 46; Risley v. Gray, 98 Cal. 40, 32 Pac. 884; Storm Lake etc. Bank v. Felt, 100 Ia. 680, 69 N. W. 1057; Fitch v. Redding, 4 Sandf. (N. Y.) 130.

[74] Russ Lumber etc. Co. v. Muscupiabe Land etc. Co., 120 Cal. 521, 52 Pac. 995, 65 Am. St. Rep. 186; Skinner v. Raynor, 95 Ia. 536, 64 N. W. 601; Hale v. Aldaffer, 5 Kan. App. 40, 5 Pac. 194.

[75] Shanklin v. Cooper, 8 Blkfd. (Ind.) 41; Larrabee v. Fairbanks, 24 Me. 363, 41 Am. Dec. 389; Martin v. Kercheval, 4 McLean (U. S.) 117, 16 Fed. Cas. No. 9,163.

[76] Hoffman v. Bank of Milwaukee, 12 Wall. 191; Hunt v. John-

the instrument knew him to be only an accommodation party.'[77]

The mercantile credit of parties is frequently loaned to others by the signature of their names as drawer, acceptor, maker, or indorser of a bill or note, to raise money upon, or to use otherwise for their benefit.[78] Such instruments are termed accommodation paper. An accommodation bill or note, then, is one to which the accommodation party has put his name, without consideration, for the purpose of accommodating some other party who is to use it, and is expected to pay it.[79] Between the accommodating and accommodated parties, the consideration may be shown to be wanting, but when the instrument has passed into the hands of a third party for value, and in the usual course of business, it cannot be. But if the holder has notice, of defenses, the accommodation party may set up any defense which would avail the party accommodated, as to set off a debt due from the holder to the party accommodated. Until an accommodation bill has been negotiated the accommodation party may rescind his obligation and demand the recall of the instrument or the cancellation of his signature. The consideration given by a holder for value of accommodation paper makes the paper enforceable against all parties to it, and this is true even where the paper has been negotiated after due.[80]

It is a well established rule that a promissory note given by the maker, in exchange for a promissory note given by the payee, is for a valuable consideration, and is in no sense an accommodation paper, although made for the mutual accommodation of the parties.[81] And this is so though the note given in exchange is worthless.[82] And it has been held that an indorsement of X's note by Y to Z is a good consideration for a note from Z to Y, and it is no defense to Z's note that he failed to recover against X on the note indorsed to him by Y.[83]

ston, 96 Ala. 130, 11 So. 387; Merrill v. Packer, 80 Ia. 543, 45 N. W. 1076.

[77] Neg. Inst. Law, § 55 (29), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[78] Dunn v. Weston, 71 Me. 270, 36 Am. Rep. 310; Lenheim v. Wilmarding, 55 Pa. St. 73. As to nature of contract on accommodation paper, see note 31 Am. St. Rep. 745.

[79] Jefferson Co. v. Burlington etc. Ry. Co., 66 Ia. 385, 16 N. W. 561; Gillman v. Henry, 53 Wis. 465, 10 N. W. 692; Vitkovitch v. Kleinecke, 33 Tex. Civ. App. 20, 75 S. W. 544.

[80] French v. Bank of Columbia, 4 Cranch 141; Stephens v. Monongahela Nat. Bank, 88 Pa. St. 157, 32 Am. Rep. 438; Pray v. Rhodes, 42 Minn. 93, 43 N. W. 838; Clark v. Thayer, 105 Mass. 216, 7 Am. Rep. 511.

[81] Backus v. Spalding, 116 Mass. 418; Farber v. Nat. Forge Co., 140 Ind. 54, 39 N. E. 249; Williams v. Banks, 11 Md. 198.

[82] Rice v. Grange, 131 N. Y. 149, 30 N. E. 46.

[83] Luke v. Fisher, 10 Cush. (Mass.) 271. As to power of corporation to issue accommodation paper, see note in 9 L. R. A. (N. S.) 193.

CHAPTER VIII.

ACCEPTANCE OF BILLS.

§ 71. Meaning of term.
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§ 71. **Meaning of term.** The acceptance of a bill of exchange is the act by which the person on whom a bill of exchange is drawn (called the drawee) assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable, to pay it when due.[1]

As stated in the Negotiable Instruments Law:

"The acceptance of a bill is the signification of the drawee of his assent to the order of the drawer."[2]

§ 72. **Object of acceptances.** Acceptance applies only to bills of exchange, foreign and inland, for the law of presentment for acceptance and of acceptance can have no application to a negotiable contract, where, from its nature, there is or can be no acceptor.

The Negotiable Instruments Law provides that:

[1] Swope v. Ross, 40 Pa. St. 186, 80 Am. Dec. 567; Kimbark v. Car etc. Co., 103 Ill. App. 632; Wolcott v. Van Santvoord, 17 Johns. (N. Y.) 248, 8 Am. Dec. 396.

[2] Neg. Inst. Law, § 220 (132), where all cases directly or indirectly bearing upon or citing the Law are grouped.

"A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same."[3]

Thus the drawee of a bill is not bound as a party to the bill until he has accepted it,[4] or agreed previously to pay it,[5] and cannot be sued by the holder of the instrument, though he has funds in his hands sufficient to cover the bill,[6] except where the bill constitutes an equitable assignment of the fund drawn against.[7] So due presentment for acceptance by the holder is a condition precedent to the exercise of rights against the other parties to the instrument arising when the bill is dishonored by non-acceptance. The object of acceptance then is to bind the drawee and make him an actual and bound party to the instrument which he is not until he has accepted. For until there has been an acceptance the drawee is under no obligation whatever upon the bill itself. He may have in his possession funds belonging to the drawer, but that is a different obligation from that which appears upon the face of the instrument, and until he does accept either in writing or verbally, he is under no obligation to the parties upon the bill of exchange. Thus, the purpose of acceptance is to create liability on the part of the drawee of the bill. By accepting he agrees to pay according to the terms of the bill, that is, his contract, after he writes his acceptance or verbally makes the acceptance, is on the bill itself.

§ 73. Form of acceptance. By the Negotiable Instruments Law the acceptance must be written, signed by the drawee and must contain an express or implied promise to pay in money. The provisions are as follows:

"The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money."[8]

"The holder of a bill presenting the same for acceptance may

[3] Neg. Inst. Law, § 211 (127), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[4] Pickle v. Muse, 88 Tenn. 380, 12 S. W. 919, 17 Am. St. Rep. 900, 7 L. R. A. 93; Poole v. Carhart, 71 Ia. 37, 32 N. W. 16; Imp. Co. v. Erwin, 66 Kan. 261, 71 P. 521.

[5] Coolidge v. Payson, 2 Wheat. (U. S.) 66; Lindley v. Waterloo First Nat. Bank, 76 Iowa 629, 41 N. W. 381, 14 Am. St. Rep. 254; Dull v. Bricker, 70 Pa. St. 255; Neg. Inst. Law, § 223 (135).

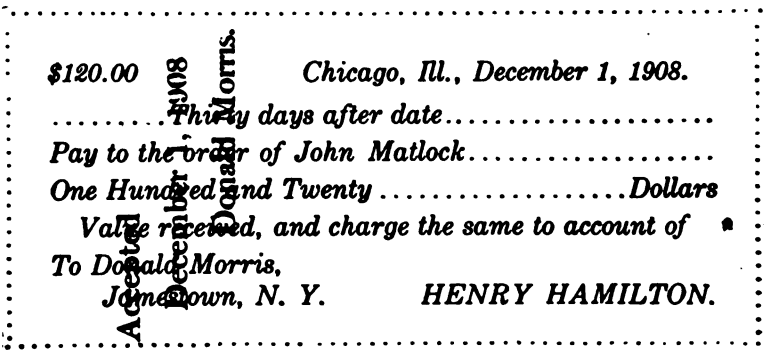
[6] Rockville Nat. Bank v. Lafayette etc. Bank, 69 Ind. 479, 35 Am. Rep. 236; Schuchardt v. Hall, 36 Md. 590, 11 Am. Rep. 514.

[7] Brill v. Tuttle, 81 N. Y. 454; Torrance v. Bank of British North Am., L. R. 5 P. C. 246.

[8] Neg. Inst. Law, § 220 (132), where all cases directly or indirectly bearing upon or citing the Law are grouped.

require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored."[9]

Below is a form of acceptance written on an instrument:



The acceptance may be made while the bill is still incomplete,[10] but is usually made a reasonable time after execution. The holder may require that the date of acceptance be written on the bill so it will appear from the face of the instrument when it is due.[11]

An acceptance, if in writing, is constituted by words showing an intention to accept and not putting a direct negative upon the order contained in the bill.[12] At common law a verbal acceptance is allowed and such is constituted by any words which evidence such intention clearly and unequivocally, if they be addressed to the drawer or holder, and he waive his right to a written acceptance.[13] And at common law an acceptance may also be implied from conduct evidencing such intention.

Acceptance by telegram has been held sufficient,[14] and under the statute of some states, which make an unconditional promise

[9] Neg. Inst. Law, § 221 (133), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[10] Neg. Inst. Law, § 226 (138), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[11] Neg. Inst. Law, § 221 (133), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[12] Cortelyou v. Maben, 32 Neb. 697, 36 N. W. 159, 3 Am. St. Rep. 284; Whilden v. Merchants etc. Nat. Bank, 64 Ala. 1, 38 Am. Rep. 1; Block v. Wilkerson, 42 Ark. 253; Bank v. Bank (Kan.), 87 Pac. 746.

[13] In re Goddard, 66 Vt. 415, 29 Atl. 634; Walker v. Lide, 1 Rich. (S. C.) 249, 44 Am. Dec. 252; Ecker v. Snowden, 2 Miles (Pa.) 275. For a full discussion see: Allen v. Leavens, 26 Oreg. 164, 37 Pac. 488, 46 Am. St. Rep. 613, 26 L. R. A. 620. See also note 1 Am. St. Rep. 137.

[14] Flora etc. Bank v. Clark, 61 Md. 400, 48 Am. Rep. 114; Garrettson v. North Atchinson Bank, 39 Fed. 163, 7 L. R. A. 428. See also note 4 U. S. L. Ed. 185.

to accept a bill before it is drawn equivalent to actual acceptance in favor of a party, who upon the faith thereof receives it for valuable consideration, it has been adjudged that a telegram written and sent by the promisor operates as an acceptance.[15]

§ 74. Nature and effect of acceptance. The drawer of a bill undertakes that when it is presented to the drawee the latter will accept it; and by acceptance is meant an undertaking on the drawee's part to pay the bill according to its tenor. Until the bill has been accepted, the drawer is the primary debtor. After acceptance, the drawer becomes secondarily liable, and his liability is the same as that of a first indorser upon a promissory note.

The effect of the acceptance of a bill is to constitute the acceptor the principal debtor.[16] The bill becomes by the acceptance very similar to a promissory note—the acceptor being the promisor, and the drawer standing in the relation of an indorser.[17]

Upon paying the bill the acceptor can charge the amount of the same to the fund of the drawer in his hands, or if he has none, he can recover from the drawer by action.[18] If the drawee refuses to accept the instrument after he has promised to do so, the drawer may sue on the original amount due or on the breach of his promise to accept the bill.[19]

§ 75. According to tenor of bill. The acceptance must be according to the tenor of the bill to bind all the parties to it. The promise must be to pay all the money called for in the bill, at the time and place of payment.[20] If the acceptance were not according to the tenor of the bill there would be two or three causes of action divided among the parties. If an acceptor of a hundred-dollar bill of exchange accepts for $50, that leaves $50 which has not been accepted. There would be confusion when the obligation was paid; the party paying would be entitled to possession of the bill and that would raise the presumption that the whole bill was paid. So for these among other reasons, the acceptance must be according to the tenor of the bill. When the modification of the tenor of the bill is such that it either

[15] Henrietta Nat. Bank v. State Nat. Bank, 80 Tex. 648, 16 S. W. 321, 26 Am. St. Rep. 773. See also note 2 L. R. A. 709.

[16] Jarvis v. Wilson, 46 Conn. 90, 33 Am. Rep. 18; Farmers etc. Bank v. Rathbone, 26 Vt. 19, 58 Am. Dec. 200; Ragsdale v. Gresham, 141 Ala. 308, 37 So. 367. As to accommodation acceptor see: White v. Hopkins, 3 Watts & S. (Pa.) 99, 37 Am. Dec. 542. See Van Alstyne v. Sorley, 32 Tex. 518. See note 1 Am. St. Rep. 134.

[17] Raborg et al. v. Peyton, 2 Wheat (15 U. S.) 385.

[18] Christian v. Keen, 80 Va. 377; Martin v. Muncy, 40 La. Ann. 190.

[19] Cooper v. Jones, 79 Ga. 379, 4 S. E. 916; Coursin v. Ledlie, 3 Pa. St. 506; Quin v. Hanley, 5 Ill. App. 51.

[20] See, however, § 79 on qualified acceptance.

casts no hardship upon the indorser or where the indorser or parties prior to the acceptor know of the modification and assent to it, there the reason for rejecting it as a form of acceptance ceases to exist, and so the rule is that a modified or qualified acceptance if immaterial, or if known and assented to is a good acceptance.

The Negotiable Instruments Law provides as follows as to a qualified acceptance:

"The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto."[21]

§ 76. **Delivery.** The Negotiable Instruments Law provides:

"Acceptance means an acceptance completed by delivery or notification."[22]

This is the general rule and to avoid confusion should be followed in all jurisdictions.

§ 77. **Acceptance of incomplete bill.** While still incomplete a bill may be accepted. The Negotiable Instruments Law provides:

"A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the presentment."[23]

§ 78. **Varieties of acceptance—In general.** There are several varieties of acceptance. For convenience they may be classified as to their terms, as to their form, and as to the mode of proof. As to their terms acceptances are either general or qualified; as to their form, they are either written or by parol; as to their mode of proof, they are either express or implied.

[21] Neg. Inst. Law, § 230 (142), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[22] Neg. Inst. Law, § 2 (191), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[23] Neg. Inst. Law, § 226 (138), where all cases directly or indirectly bearing upon or citing the Law are grouped.

§ 79. Varieties of acceptances—As to terms—General acceptance. *"An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn."*[24]

"An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere."[25]

The above sections of the Negotiable Instruments Law, as a general rule, have been the law in this country without statutory enactment.

§ 80. Varieties of acceptances—As to terms—Qualified acceptance. The Negotiable Instruments Law provides:

"An acceptance is qualified which is (1) conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated; (2) partial, that is to say, acceptance to pay part only of the amount for which the bill is drawn; (3) local, that is to say, an acceptance to pay only at a particular place; (4) qualified as to time; (5) the acceptance of some one or more of drawees, but not of all."[26]

The above is a clear statement of the law generally.

§ 81. Varieties of acceptance—As to form—In general. As to their form acceptances in the absence of statute are written or parol.

A written acceptance: (1) may be written on the instrument; or (2) it may be written on a separate paper; and if on a separate paper, (a) it may be an acceptance as to an existing bill; or it may be (b) an acceptance as to a non-existing bill.

§ 82. Varieties of acceptance—As to form—Written. Take a bill of exchange: the drawee writes across the face of the bill "accepted" and signs his name on the bill itself.[27] That is the first form. Now, take the second form of written acceptances: A writes B that he has drawn on him for $500 and wants to know whether he will accept that, and B writes to A, or to the

As to acceptance when bill is incomplete see: Bank v. Neal, 22 How (63 U. S.) 107; Hopps v. Savage, 69 Md. 513.

[24] Neg. Inst. Law, § 227 (139), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[25] Neg. Inst. Law, § 228 (140), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[26] Neg. Inst. Law, § 229 (141), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[27] Spear v. Pratt, 2 Hill (N. Y.) 582, 38 Am. Dec. 600. Not absolutely necessary to use the word accepted, Whilden v. Merchants etc. Nat. Bank, 64 Ala. 1, 38 Am. Rep. 1. When insufficient, Cook v. Baldwin, 120 Mass. 317, 21 Am. Rep. 517.

payee C, "yes, I will accept that bill." That is an acceptance of an existing bill.[28] Now, suppose A writes to B and says: "I (in the future) am going to draw on you and want to know if you are going to accept it," and B writes A and says he will accept it. That is the acceptance of a non-existing bill.[29] As to the existing bill the Negotiable Instruments Law provides:

"Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor, except in favor of a person to whom it was shown and who, on the faith thereof, receives the bill for value."[30]

For example, a certain instrument has been drawn and A holds the instrument; it has been drawn upon B, and A writes to B a letter and says a certain instrument has been drawn upon him and describes it in definite terms or reasonably so, and then B writes back and states in his letter that he accepts that bill which has been drawn upon him and that he will pay it; then A holds this instrument, he also holds the letter, he shows them to X and X says: "I will take that instrument upon the promise of B that he will accept it. I see that he has written that he would and has clearly described the bill of exchange, and I will receive it." Such an acceptance is valid and conforms with the requirements.

Thus the acceptance may be on a separate paper, but the promise must be clear and unequivocal.

As to the non-existing bill the Negotiable Instruments Law provides: *"An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value."*[31]

If the bill is not in existence, for the convenience of business, the acceptance may be on a separate paper.

The requirements are:

(1) That the contemplated drawee shall describe the bill to be drawn, and promise to accept it.[32]

[28] Cook v. Miltenberger, 23 La. Ann. 377; Bank of Commerce v. J. G. Shaw Band, 54 N. Y. Sup. Ct. 83; Coolidge v. Payson, 2 Wheat. 66.

[29] Evansville Nat. Bank v. Kaufmann, 24 Hun (N. Y.) 612; Barnsdall v. Waltemeyer, 142 Fed. 415, 73 C. C. A. 515.

[30] Neg. Inst. Law, § 222 (134), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[31] Neg. Inst. Law, § 223 (135), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[32] Von Phul v. Sloan, 2 Rob. (La.) 148, 38 Am. Dec. 207; Fowler v. McPhee, 13 Colo. App. 185, 56 Pac. 118; Am. Waterworks Co. v. Venner, 18 N. Y. S. 379, 45 N. Y. St. 441; Brinkman v. Hunter, 73 Mo. 172, 39 Am. Rep. 492; Burke v. Utah Nat. Bank, 47 Neb. 247, 66 N. W. 295.

(2) That the bill shall be drawn in a reasonable time after such promise is written;[33] and

(3) That the holder shall take the bill upon the credit of the promise.[34]

Thus A says to B: "I am going to draw upon you for $500 and I want to know if you will accept the instrument, if I draw upon you," and B writes back a letter and says: "I will accept that instrument for $500;" and describes the instrument so it can be understood. A shows this letter to Y and Y says: "Yes, I see you have drawn that instrument as you said you would and I will take the instrument, relying upon B's written promise." Such an acceptance is valid and conforms with the requirements.

The last principles also apply to acceptances on a separate paper whether the bill is or is not in existence. That is, (1) credit must be given to the promise, (2) the bill must be described and the terms must be definite, or reasonably so, and (3) the bill must have been discounted upon the promise. But the promise is exempted if not made with the knowledge of some holder of the bill.[35] An acceptance on a separate piece of paper is a valid acceptance mainly because it assists in the negotiating of bills.

§ 83. Varieties of acceptances—As to form—Parol. A parol acceptance is not recognized by the Negotiable Instruments Law.[36]

In the absence of a statutory intervention, it is the common-law rule that an unequivocal parol promise to accept a specific existing bill is binding.[37] But such a promise to accept a future bill, even though the bill be taken by the holder upon the faith and credit of such promise, is not binding as an acceptance. Thus where A calls up B over the telephone and says: "B, I am going to draw a certain bill of exchange upon you and I want to know if you will accept it," and B says, "Yes, I will accept it," and A draws the bill and takes it to Z and tells him what was said

[33] Flora First Nat. Bank v. Clark, 61 Md. 400, 48 Am. Rep. 114; Wilson v. Clements, 3 Mass. 1; Union Bank v. Shea, 57 Minn. 180, 58 N. W. 985.

What is reasonable. Nimochs v. Woody, 97 N. C. 1, 2 S. E. 249, 2 Am. St. Rep. 268.

[34] Kennedy v. Geddes, 8 Port. (Ala.) 263, 33 Am. Dec. 289; Sternan v. Harrison, 42 Pa. St. 49, 82 Am. Dec. 491; Hall v. Emporia Nat. Bank, 133 Ill. 234, 24 N. E. 546; Nelson v. Chi. First Nat. Bank, 48 Ill. 39, 95 Am. Dec. 510. See Storer v. Logan, 9 Mass. 55.

[35] Pollock v. Helm, 54 Miss. 1, 28 Am. Rep. 342; Nimochs v. Woody, 97 N. C. 1, 2 S. E. 249, 2 Am. St. Rep. 268; Coolidge v. Payson, 2 Wheat. (U. S.) 66.

[36] Neg. Inst. Law, § 220 (132), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[37] Whilden v. Merchants etc. Bank, 64 Ala. 1, 38 Am. Rep. 1; Joyce v. Wing Yet Lung, 87 Cal.

by B, and Z takes it, and Z doesn't wish to rely on the credit of A because A has no credit, but takes it because of B's credit; the law generally is that such a promise is not a good acceptance of a bill not in existence, if made by parol.[38]

§ 84. Varieties of acceptances—As to mode of proof—Express. An express acceptance is an acceptance written upon the face of the instrument.[39]

§ 85. Varieties of acceptances—As to mode of proof—Implied. An implied acceptance is any act which clearly indicates an intention to comply with the request of the drawer, or any conduct of the drawee from which the holder is justified in drawing the conclusion that the drawee intended to accept the bill, and intended to be so understood.[40]

The Negotiable Instruments Law provides:

"Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same."[41]

§ 86. Acceptance of bills drawn in sets. The law as to the acceptance of bills drawn in sets is set out in the Negotiable Instruments Law as follows:

"The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill."[42]

§ 87. Revocation of acceptance. The acceptor or drawee

424, 25 Pac. 545; Ecker v. Snowden, 2 Miles (Pa.) 275; In re Goddard, 66 Vt. 415, 29 Atl. 634. As to parol acceptances, see note 26 L. R. A. 620.

[38] Wakefield v. Greenhood, 29 Cal. 597; Mercantile Bank v. Cox, 38 Me. 500; Nichols v. Commercial Bank, 55 Mo. App. 81.

Contra, Nelson v. Chi. First Nat. Bank, 48 Ill. 36, 95 Am. Dec. 510; Woodward v. Griffins-Marshall Grain Co., 43 Minn. 260, 45 N. W. 433.

[39] Spear v. Pratt, 2 Hill (N. Y.) 582, 38 Am. Dec. 600; Cortelyou v. Maben, 32 Neb. 697, 36 N. W. 159, 8 Am. St. Rep. 284.

[40] Westburg v. Chicago L. & C. Co., 117 Wis. 589; Overman v. Hoboken City Bank, 31 N. J. L. 563; State v. Weiss, 91 N. Y. S. 276; Hough v. Loring, 24 Pick. (Mass.) 254; Pickle v. Muse, 88 Tenn. 380, 12 S. W. 919, 17 Am. St. Rep. 900, 7 L. R. A. 93; Dickinson v. Marsh, 57 Mo. App. 566; Hall v. Emporia First Nat. Bank, 133 Ill. 234, 24 N. E. 546.

[41] Neg. Inst. Law, § 225 (137), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[42] Neg. Inst. Law, § 313 (181), where all cases directly or indirectly bearing upon or citing the Law are grouped.

who has not communicated his acceptance or the accepted bill to the holder, may revoke an acceptance before delivery and cancel the written acceptance.[43]

§ 88. What bills must be presented for acceptance. The Negotiable Instruments Law provides:

"Presentment for acceptance must be made.

1. Where the bill is payable after sight or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable."[44]

Bills payable on demand or at sight without grace, or payable at a certain number of days after date, or after any other certain event, or payable on a certain day, need not be presented for acceptance at all, but only for payment.[45] But it is usual and best, when the bill is payable at a future day, to present it for acceptance, in order to ascertain whether it will certainly be honored, and to procure the assurance of liability of the acceptor.

Bills payable at sight or at so many days after sight, or after demand, or after any other event not absolutely fixed must be presented to the drawee for acceptance and payment, or for acceptance only, without unreasonable delay, or the drawers and indorsers will be discharged, for they have an interest in having the bills accepted immediately in order to shorten the time of payment, and thus put a limit to the period of their liability and also to enable them to protect themselves by other means before it is too late, if the bill is not accepted and paid within the time originally contemplated by them.[46]

§ 89. By and to whom presentment should be made. Any person in possession of a bill of exchange may present it for

[43] Robbins v. Lambeth, 2 Rob. (La.) 304; Irving Bank v. Wetherald, 36 N. Y. 335; German Nat. Bank v. Farmers Dep. Nat. Bank, 118 Pa. St. 294, 12 Atl. 303; Guthrie Nat. Bank v. Gill, 6 Okla. 560, 54 Pac. 434.

[44] Neg. Inst. Law, § 240 (143), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[45] Commercial Bank v. Perry, 10 Rob. (La.) 61, 43 Am. Dec. 168; Carmichael v. Pennsylvania Bank, 4 How. (Miss.) 567, 35 Am. Dec. 408; House v. Adams, 48 Pa. St. 261, 86 Am. Dec. 588; Champion v. Gordon, 70 Pa. St. 474, 10 Am. Rep. 681.

[46] Neg. Inst. Law, § 241 (144), where all cases directly or indirectly bearing upon or citing the Law are grouped; Nimocks v. Woody, 97 N. C. 1, 2 S. E. 249,

acceptance, or may do so through his properly authorized agent.[47] The presentment must be made to the drawee personally or to some person who has authority to accept or refuse to accept for him:[48]

The Negotiable Instruments Law provides:

"Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only."[49]

"Where the drawee is dead, presentment may be made to his personal representative."[50]

"Where the drawee has been adjudged a bankrupt or an insolvent; or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee."[51]

§ 90. Time of presentment. The Negotiable Instruments Law provides:

"Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf."[52]

The time within which the holder must present a bill for acceptance which requires such presentment, is usually stated to be a reasonable time, and this is a mixed question of law and fact depending upon the circumstances.

Presentment should be made during usual and reasonable hours. What constitutes reasonable hours of business depends upon the custom of the particular place and also upon the trade or business. Any hour before the customary hour of retiring will be sufficient when presented at drawee's residence.[53]

The Negotiable Instruments Law further provides:

"The drawee is allowed twenty-four hours after presentment

2 Am. St. Rep. 268; Nutting v. Burked, 48 Mich. 241; Thornburg v. Emmons, 23 W. Va. 333.

[47] Neg. Ifs. Law, § 242, subd. 1; Stainback v. Bank, 11 Gratt. 269; Walker v. State Bank, 9 N. Y. 582.

[48] Schuchardt v. Hall, 36 Md. 590, 11 Am. Rep. 514; Stainback v. State Bank, 11 Gratt. (Va.) 269; Nelson v. Fotterall, 7 Leigh (Va.) 179.

[49] Neg. Inst. Law, § 242 (145), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[50] See preceding note.

[51] See preceding note.

[52] Neg. Inst. Law, § 242 (145), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[53] Bolton v. Harrod, 9 Mart. (La.) 326, 13 Am. Dec. 306; Robinson v. Ames, 20 Johns. (N. Y.) 146, 11 Am. Dec. 259; Phœnix Ins. Co. v. Allen, 11 Mich. 501.

Rule does not apply to non-nego-

in which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation."[54]

There may be an acceptance after there has been a refusal to accept or after protest or after dishonor.[55] So when we say it must be in a reasonable time, that means when the instrument is first presented for acceptance. It does not mean that after 24 hours the bill can never be accepted. If it is not accepted in 24 hours, the presumption arises that it will not be accepted.

§ 91. Place of presentment. The presentment for acceptance, if the bill is addressed to the drawee at a particular place, should be made at that place.[56] If the bill is not addressed to any particular place, presentment should be made either to the drawee personally, or at his dwelling or place of business[57] at the time of presentment.

§ 92. Presentment excused. "*Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases: (1) Where the drawee is dead or has absconded, or is a fictitious person or a person not having capacity to contract by bill. (2) Where, after the exercise of reasonable diligence, presentment cannot be made. (3) Where, although presentment has been irregular, acceptance has been refused on some other ground.*"[58]

Presentment for acceptance is excused and the bill should be protested as dishonored by non-acceptance: when the drawee is discovered to be a fictitious person, or is incapable of making a valid contract from legal disabilities, or where, after reasonable diligence to ascertain the drawee, the presentment cannot be effected, or under any other like circumstances.

§ 93. Acceptances for honor, or supra protest. The Negotiable Instruments Law provides:

"*Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for*

tiable paper. Briggs v. Persons, 31 Mich. 400.

[54] Neg. Inst. Law, § 224 (136), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[55] Wynne v. Raikes, 5 East. 514; Thompson on Bills, 214.

[56] Wolfe v. Jewett, 10 La. 383; Ratcliff v. Planters Bank, 2 Sneed (Tenn.) 425; Reynolds v. Chittle, 2 Campb. 596.

[57] Boot v. Franklin, 3 Johns. (N. Y.) 207; Mason v. Franklin, 3 Johns. (N. Y.) 202; Anderson v. Drake, 14 Johns. (N. Y.) 113.

[58] Neg. Inst. Law, § 245 (148), where all cases directly or indirectly bearing upon or citing the Law are grouped.

honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party."[59]

"*An acceptance for honor, supra protest, must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.*"[60]

"*Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.*"[61]

"*The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.*"[62]

This is a peculiar kind of acceptance. It most frequently happens when the original drawee refuses to accept the bill, in which case a stranger may accept the bill for the honor of some one of the parties thereto, which acceptance will inure to the benefit of all the parties subsequent to him for whose honor it was accepted. It is essential that the acceptor for honor appear before a notary public and declare that he accepts the protested bill in honor of the drawer or indorser, as the case may be, and that he will pay it at the appointed time.

An acceptance for honor, then, is properly made by the acceptor appearing before a notary public and declaring his intention to accept for the honor of some one or more of the parties and subscribing to some such expression of his intention as "accepted for the honor of A."[63]

This is done to save the credit of the parties to the instrument, or some party to it, as the drawer, drawee, or indorser, or somebody else. Some one desires to save the credit of some one on the bill, and he does so by writing "accepted" on the bill. The court holds that the consideration is presumed, and the presumption is that he does have funds or money.

"*The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee,*

[59] Neg. Inst. Law, § 280 (161), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[60] Neg. Inst. Law, § 281 (162), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[61] Neg. Inst. Law, § 282 (163), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[62] Neg. Ins. Law, § 283 (164), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[63] Gazzam v. Armstrong, 3 Dana (Ky.) 554. See note 7 U. S. L. Ed. 132.

and provided that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him."[64]

The undertaking of the acceptor for honor is not an absolute engagement to pay at all events, but only a collateral and conditional engagement to pay, if the drawee does not.[65] The result of this rule is to require that the bill be presented to the drawee named therein at its maturity for payment and if payment is refused that it be protested and notice of dishonor given to him.[66] And the rule has been stated that the acceptor of a bill for the honor of the drawer cannot maintain an action thereon against him, without proof of its presentment to the drawee and non-acceptance or non-payment by him, and notice thereof to the drawer.[67]

The following miscellaneous provisions relating to acceptances for honor are found in the Negotiable Instruments Law:

"*Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.*"[68]

"*When a dishonored bill has been accepted for honor, supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or reference in case of need.*"[69]

"*Presentment for payment to the acceptor for honor must be made as follows: (1) If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity; (2) If it is presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and seventy-five.*"[70]

"*The provisions of section one hundred and forty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.*"[71]

"*When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.*"[72]

[64] Neg. Inst. Law, § 284 (165), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[65] Schofield v. Bayard, 3 Wend. (N. Y.) 488; Mitchell v. Baring, 18 M. & M. 381.

[66] Walton v. Williams, 4 Ala. 347; Baring v. Clark, 19 Pick. (Mass.) 220.

[67] Wood v. Pugh, 7 Ohio, (Pt. 2) 156.

[68] Neg. Inst. Law, § 285 (166).

[69] Neg. Inst. Law, § 286 (167).

[70] Neg. Inst. Law, § 287 (168).

[71] Neg. Inst. Law, § 288 (169).

[72] Neg. Inst. Law, § 289 (170).

CHAPTER IX.

NEGOTIATION—BY INDORSEMENT.

§ 94. Meaning of term negotiation.
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§ 94. Meaning of term negotiation. Negotiation is an act of the parties or of the law, by which the title to bills and notes is conveyed from one person to another.[1]

As a bill or note is a chattel it may be sold as a chattel; it is also a chose in action and may be assigned as a chose in action; and as it is also a negotiable instrument it may be transferred by indorsement according to the rules of the law merchant.[2]

§ 95. Who may negotiate. In general, a bill or note must be negotiated by the *de facto* holder, that is, the person in possession of a bill or note and to whom it is payable, whether his possession be lawful or not.[3] And in such sense it is broader in significance than the term "holder," which customarily means lawful holder. If the bill or note is payable to bearer the person in possession is the *de facto* holder, but if the bill or note is payable to order, the *de facto* holder must have possession and be the person to whom it is payable.[4] But if the name is misspelled, or wrongly designated, the holder may negotiate by writing the name as in the bill, and then his true name. So the

[1] Odell v. Clyde, 57 N. Y. S. 126, 38 App. Div. 333; Whitworth v. Adams, 5 Rand. (Va.) 333, 415; Shaw v. Merchants Nat. Bank, 101 U. S. 557, 562, 25 L. Ed. 892.

[2] Willis v. Barrett, 2 Stark, 29; Bryant v. Eastman, 7 Cush. 111.

[3] Collins v. Gilbert, 94 U. S. 753; Wilson Sewing Mach. Co. v. Spears, 50 Mich. 534, 15 N. W. 894; Everton v. Bank, 66 N. Y. 14.

[4] Jackson v. Love, 82 N. C. 405; Lancaster Nat. Bank v. Taylor, 100 Mass. 18, 97 Am. Dec. 70, 1 Am. Rep. 71; Durein v. Moeser, 36 Kan. 441, 13 Pac. 797.

person who obtains title by transfer of act of law is a *de facto* holder.[5]

§ 96. Methods of negotiation. There are four methods of negotiation, viz.: by assignment, by operation of law, by indorsement, and by delivery.

The holder of a bill or note may transfer it by assignment the same as any other chose in action.[6] Where the holder of a bill payable to order transfers it without indorsement it operates as an equitable assignment, and the transferee may compel indorsement.[7] And when indorsement is subsequently obtained, the transfer operates as a negotiation from the time when given,[8] unless the indorsement was omitted at the time of transfer by fraud, accident or mistake, in which case it operates from the time of the transfer.[9]

The full title to a bill or note passes, without either assignment, indorsement, or delivery; that is, by operation of law, (a) by the death of the holder,[10] where the title vests in his personal representative, or (2) by the bankruptcy of the holder,[11] where title vests in his assignee or trustee, or (3) in some jurisdictions, where the holder is an unmarried woman, on her subsequent marriage the title vests in her husband,[12] or (4) upon the death of a joint payee or indorser, in which case the general rule is that the title vests at once in the surviving payee or indorsee.[13]

The legal title to an instrument made payable to order can regularly be transferred only by indorsement.[14] The transferee of an instrument made payable to order without indorsement is the equitable owner, and takes it subject to all the equities vested in prior parties.[15] The indorsement must be written on the bill

[5] Earhart v. Grant, 32 Ia. 481.

[6] Mitchell v. Walker, 17 Fed. Cas. No. 9,670; Deshler v. Guy, 5 Ala. 186; Biscoe v. Sneed, 11 Ark. 104.

[7] Brown v. Wilson, 45 S. C. 519, 23 S. E. 630, 55 Am. St. Rep. 779; Contro v. Rafferty, 7 Montreal Super. Ct. 146; Schoepfer v. Tommack, 97 Ill. App. 562.

[8] Goshen Nat. Bank v. Bingham, 118 N. Y. 349, 23 N. E. 180; Osgood v. Artt, 17 Fed. 575; Hays v. Plummer, 126 Cal. 107, 58 Pac. 447, 77 Am. St. Rep. 153.

[9] Beard v. Dedolp, 29 Wis. 136.

[10] Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Campbell v. Brown, 64 Ia. 425, 20 N. W. 745, 52 Am. Rep. 446.

[11] Roberts v. Hall, 37 Conn. 205, 9 Am. Rep. 308; Billings v. Collins, 44 Me. 271.

[12] Coles v. Davis, 1 Campb. 485.

[13] Draper v. Jackson, 16 Mass. 480; Allen v. Tate, 58 Miss. 585; Sanford v. Sanford, 45 N. Y. 723. Some jurisdictions have statutes contra.

[14] Hopkins v. Manchester, 16 R. I. 663, 19 Atl. 243, 7 L. R. A. 387; Chadron Bank v. Anderson, 6 Wyo. 518, 48 Pac. 197.

[15] Pavey v. Stauffer, 45 La. Ann. 353, 12 So. 512, 19 L. R. A. 716; Bishop v. Chase, 156 Mo. 158, 56 S. W. 1080, 79 Am. St. Rep. 515.

itself,[16] or on a copy,[17] or on a slip of paper attached thereto called an "Allonge" and considered a part of the bill.[18] The indorsement may be on the face of the bill. When the note or bill is made or becomes payable to bearer, it is transferable by delivery without indorsement.[19]

§ 97. **Meaning of indorsement.** An acceptance applies to bills alone, while indorsement applies to both bills and notes. The indorsement cannot be by parol and the proper place for writing it is on the back of the instrument.[20] *"The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement."*[21] Indorsement means an indorsement completed by delivery.[22] The law looks to the intention of the parties rather than to the form as to indorsements. A person writes certain words upon the back of the instrument: was it the intention to indorse the instrument or do something else? And the law is very apt to consider any words as an indorsement rather than something else.[23] *"A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity."*[24] There is one exception, however, and that is in the case of a guarantor, or a guarantee written on the back of an instrument.[25] And it should be noted that there is a difference between a surety and a guarantor. A guarantor promises to account for the debt, default, or miscarriage of another person. The surety is bound in his own right with his principal and as an original promisor. He is the debtor from the beginning and is held to know of the default of the principal. On the other hand, the contract of the guarantor

[16] Partridge v. Davis, 20 Vt. 499; Gorman v. Ketchum, 33 Wis. 427; Hartwell v. Hemmenway, 7 Pick. 117.

[17] Crosby v. Roub, 16 Wis. 645; Folger v. Chase 18 Pick. 63; French v. Turner, 15 Ind. 59.

[18] Wilton v. Williams, 44 Ala. 347; Haines v. Dubois, 30 N. J. L. 259.

[19] Freund v. Importers Nat. Bank, 76 N. Y. 352; Partridge v. Davis, 20 Vt. 499; Gorman v. Ketcham, 33 Wis. 427.

[20] Neg. Inst. Law, § 61 (31), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[21] Neg. Inst. Law, § 2 (191), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[22] Myers v. Wright, 33 Ill. 284; Brown v. Butchers etc. Bank, 6 Hill (N. Y.) 443, 41 Am. Dec. 755.

[23] Neg. Inst. Law, § 113 (63), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[24] Edgerly v. Lawson, 176 Mass. 551, 57 N. E. 1020, 51 L. R. A. 432; Ely v. Bibb, 4 J. J. Marsh. (Ky.) 71. See Chap. XXI on Suretyship and Guaranty.

is his own separate contract. It is in the nature of a warrant by himself that the thing to be done by the principal shall be done. The contract is not his contract and he is not bound to take notice of non-performance. A surety obligation is a primary obligation. The surety and the principal may be joined as defendants in one suit, or the surety may be sued alone. So, we see, then, there is that exception as to a guaranty; when a guarantee is written on the back of an instrument it will not be construed as an indorsement, but most any other agreement or arrangement will be construed as an indorsement.

§ 98. Who indorse. The party to whose order the instrument is made payable should indorse the instrument.[26]

"Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others."[27]

"Where an instrument is drawn or indorsed to a person as 'cashier' or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer."[28]

§ 99. Nature of indorsement. As to its nature the indorsement is a contract[29] and also a transfer. Every indorser is a new drawer and the terms are found on the face of the bill or note. There is an exception in case the indorsement is to A and not to his order, A could not negotiate it. There is an added obligation upon the instrument aside from what appears upon the face of the instrument. The person who indorses it says, "Yes, I made that contract, but you must present that for payment and you must notify me if it is not paid. If that is presented for acceptance and not accepted, or presented for payment and not paid, then I will pay it." That is the contract that the indorser on an instrument makes. He says, "I will pay the instrument according to the face of the bill,[30] provided you give me notice of its non-acceptance or non-payment."[31] So an indorsement

[26] Cock v. Fellows, 1 Johns. (N. Y.) 143; Freeman v. Perry, 22 Conn. 617; Woodbury v. Woodbury, 47 N. H. 11; Ellis v. Brown, 6 Barb. 282.

[27] Neg. Inst. Law, § 71 (41), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[28] Neg. Inst. Law, § 72 (42), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[29] Furgerson v. Stapels, 83 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Mudd v. Harper, 1 Md. 110, 54 Am. Dec. 644.

[30] Van Vleet v. Sledge, 45 Fed. 743; Prentiss v. Savage, 13 Mass. 20; Woodward v. Lowry, 74 Ga. 148.

[31] Jones v. Robinson, 11 Ark.

performs two things: It makes a contract and it transfers the instrument; the indorser says to every person on the face of that instrument and to every person who precedes him as an indorser of the instrument, "If this instrument is not paid by the person who is primarily liable on the instrument, and if you give me due notice that the instrument has not been paid, then I will pay it." That is the contract. He doesn't say that he would pay it absolutely, but "if you give me notice that the person who is liable on the instrument will not pay or has failed in some respect, I will pay the instrument." Of course, if it is a bill of exchange, and it is not accepted by the acceptor, the indorser says by indorsing it, "If it is not accepted and you duly notify me, I will then pay the instrument." In that case, if the drawee did not accept it, the drawer would be primarily liable. In the case of a note, the indorser says, "In case that instrument is not paid, and you give me notice of the fact that the maker does not pay the note, then I will pay the note myself."

The indorsement of a bill or note implies an undertaking from the indorser to the person in whose favor it is made and to every other person to whom the bill or note may afterwards be transferred, exactly similar to that which is implied by drawing a bill, except that in the case of drawing a bill the stipulation with respect to the drawer's responsibility and undertaking do not apply.

In the beginning of the course we saw that a note might waive presentment and notice. Of course, under such circumstances it will not be necessary to make them a part of the contract that the indorser makes.

§ 100. Requisites of indorsement. There are certain requisites of an indorsement.

The Negotiable Instruments Law provides:

"The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue."[32]

Take a bill for $500. Suppose the payee should indorse $250 to A and $250 to B. That could not be done, for the indorse-

504, 54 Am. Dec. 212; Beer v. Clifton, 98 Cal. 323, 33 Pac. 204, 35 Am. St. Rep. 172, 20 L. R. A. 580.

[32] Neg. Inst. Law, § 62 (42), where all cases directly or indirectly bearing upon or citing the Law are grouped.

ment must be in accordance with the bill.[33] But if $250 was paid on the bill, the rest could be indorsed to someone else. The test then is, does the transfer cut up the right of action, or does it vary the rights of the parties? If a note for value was transferred and there was a neglect to indorse it, the transferrer may be compelled, in equity, to make the indorsement.[34] The transferee is the rightful holder of it until it is indorsed, and equity would compel that there should be an indorsement. Suppose a case where the note was indorsed by A to B, and then B indorsed it to A, each transfer being for value, can A recover from B on that indorsement? No. Because of circuity of action. If A sued B, B could turn right around and sue A. Consequently, it is held that that could not be done, unless A, in the first instance, should indorse "without recourse," and B did not.[35]

The indorsement must follow the tenor of the bill or note. A bill or note cannot be divided into two different parts, and one cannot accept part and not the other, or pay part of it and not pay the other part, providing it divides the cause of action. It would not be absolutely void to divide it up in this way; it would be binding between the parties, yet it would not be negotiable by the law merchant.[36] That means not good by the law merchant. Then, a second requisite is that the indorsement be by the payee or subsequent holder. And the third requisite is as to delivery. There can be no question as between the immediate parties but that a delivery is necessary, and when the instrument gets into the hands of a *bona fide* holder a delivery is necessary unless certain things arise whereby the transferrer would be estopped. And there must arise something of that nature in order to say that an indorsement is valid without delivery.

§ 101. Varieties of indorsement. There are various liabilities which may be engrafted on a negotiable instrument, evidenced by the character and terms of the indorsement thereon. An indorsement may be (a) special, or (b) in blank; it may be (c) absolute, or (d) conditional; it may be (e) restrictive; it may be (f) without recourse on the indorser; and there may

[33] Planters Bank of Tenn. v. Evans, 36 Tex. 592; Hughes v. Kiddell, 2 Bay (S. C.) 324; Douglas v. Wilkeson, 6 Wend. 637; Hawkins v. Cudy, 1 Ld. Raym. 360; Erwin v. Lynn, 16 Ohio St. 547.

[34] Schoepfer v. Tommack, 97 Ill. App. 562; Brown v. Wilson, 45 S. C. 519, 23 S. E. 630, 55 Am. St. Rep. 779; Couter v. Rafferty, 7 Montreal Super. Ct. 146.

[35] Bishop v. Hayward, 4 Term R. 470; Moore v. Cross, 19 N. Y. 227; Wilders v. Stevens, 15 Mees. & W. 208.

[36] Cock v. Fellows, 1 Johns (N. Y.) 143; Newman v. Ravenscroft, 67 Ill. 493; Pease v. Dwight, 6 How (U. S.) 190.

be (g) joint indorsements of the instrument, (h) successive indorsements, and also (i) irregular indorsements.

The Negotiable Instruments Law provides:

"An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional."[37]

Below are given some of the most common forms of indorsement:

(Indorsement in full)
Pay to DONALD S. MORRIS or order.
NATHAN REDDING.

(Indorsement in blank)
DONALD S. MORRIS.

(Qualified Indorsement)
Without recourse.
JOSEPH THOMPSON.

(Conditional Indorsement)
Pay HENRY HUDER or order on the completion of the Newcastle Road.
HENRY STEVENSON.

(Restrictive Indorsements)
1. Pay only to EARL MATLOCK for collection for my account.
HENRY HUDER.

2. Pay to HENRY REEVE or order as Trustee for GEORGE GRAVES.
WILLIAM ADDISON.

(Indorsement by guaranty)
For value received I hereby guaranty the payment of this note together with any costs incurred in collection.
LOUIS EWBANK.

§ 102. Indorsement in full or special indorsement. A special indorsement or an indorsement in full is one which mentions the name of the person in whose favor it is made and to whom, or to whose order, the sum is to be paid. For instance: "Pay to B, or order," signed "A," is an indorsement in full by A, the payee or holder of the paper, to B.

The special indorsement is the same as an indorsement in full. It is an indorsement to someone or order; that is, *"a special indorsement specifies the person to whom, or to whose order, the instrument is to be payable."*[38]

The subsequent indorsee must write his order on the instrument; that is, *"the indorsement of such indorsee is necessary to the further negotiation of the instrument."*[39] And the subse-

[37] Neg. Inst. Law, § 63 (43), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[38] Neg. Inst. Law, § 64 (44), where all cases directly or indirectly bearing upon or citing the Law are grouped. But see Spence v. Robinson, 35 W. Va. 313, 13 S. E. 1004.

[39] Neg. Inst. Law, § 64 (44), where all cases directly or indirectly bearing upon or citing the Law are grouped.

quent holder of the instrument would be required to make more proof in order to recover on the instrument when it is indorsed in full. When there is a special indorsement, one endeavoring to recover from one who has received it by special indorsement must prove the signature of two persons; where it is indorsed in blank, one would have to prove the signature of the party only against whom he was endeavoring to recover.

§ 103. Indorsement in blank. An indorsement in blank is one which does not mention the name of the indorsee, and generally consists simply of the payee placing his name in writing on the back of the instrument.[40] The holder of a bill with a blank indorsement may, by writing a name over the indorser's signature, convert it into a special indorsement,[41] but such a bill is not restrained thereby and is payable to bearer, except that the special indorser is only liable to parties making title through his indorsement.[42]

§ 104. Absolute and conditional indorsements. An absolute indorsement is one by which the indorser binds himself to pay, upon no other condition than the failure of prior parties to do so, and of due notice to him of such failure. A conditional indorsement is one by which the indorser annexes some other condition to his liability; that is, where there is some condition in the indorsement.[43] Now as to the condition, if it is in the indorsement, the courts hold that it is valid. There may be a valid conditional indorsement and it accomplishes justice, and yet it seems to restrict the circulation of the instrument to some extent, because there is some condition attached to it. Yet it does not in any way interfere with the face of the instrument as such; it is a primary obligation when it is on the face of the instrument, and is invalid, but if it is an indorsement it is valid, and does not make the instrument a non-negotiable instrument.[44]

"Where an indorsement is conditional a party required to pay the instrument may disregard the condition and make payment to the indorser or his transferee whether the condition has been fulfilled or not. But any person to whom an instrument so in-

[40] Neg. Inst. Law, § 64 (44), where all cases directly or indirectly bearing upon or citing the Law are grouped. See also note 1 L. R. A. 712.

[41] Illinois Conference v. Plagge, 177 Ill. 431, 53 N. E. 76, 64 Am. St. Rep. 252; Hunter v. Hempstead, 1 Mo. 67, 13 Am. Dec. 468.

[42] Habersham v. Lehman, 63 Ga. 383; Johnson v. Mitchell, 50 Tex. 212.

[43] McGorray v. Stockton Sav. etc. Soc., 131 Cal. 321, 63 Pac. 479; Rowe v. Haines, 15 Ind. 445, 77 Am. Dec. 101; Johnson v. Barrow, 12 La. Ann. 83.

[44] Tappan v. Ely, 15 Wend. (N. Y.) 362; Soares v. Glyn, 8 Q. B. 24, 55 E. C. L. 24.

dorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally."[45]

Suppose an indorsement as follows: "Pay to A, or order, if he marries before he is 25." This is written on the back of the instrument and is not a part of the original instrument. Now, that is a conditional indorsement and is held good. It is not good if on the face of the instrument, but is held good if it is an indorsement. When a condition is written on the face of the instrument it is not negotiable,[46] but where it is written on the back the courts say it is negotiable by the law merchant. It is a contract, and the person who makes it is bound by it, providing the conditions are fulfilled.[47] We are now considering whether it is a good principle. Suppose this condition is written on the face of the note, it would apply to every man who indorses it, whereas, when it is written on the back by one indorser it only applies to him and not to the others.

Suppose an instrument is worded, "Pay to the order of A," and signed "B," "A" being the payee indorses it with a conditional indorsement and says, "Pay to C, provided he marries before he is 25." What is the value of that instrument? Could anybody get anything on that instrument? It means at any time he gets married *before* he is 25 years old. This is an exceptional case and really seems to make the note non-negotiable at the very first instance, but it does not, if not made contemporaneously with the instrument and a part of it. If a memorandum of agreement of the parties is written upon the bill or note contemporaneously with its execution, and intended by the parties to make a part of the note or bill, it is construed in the same manner as if in the body of the instrument.[48]

§ 105. Restrictive indorsement. A restrictive indorsement is one so worded as to restrict the further negotiability of the instrument; and it is then called a restrictive indorsement.[49] Thus, "Pay the contents to J. S. only," is such an indorsement.

The Negotiable Instruments Law provides:

"An indorsement is restrictive which either (1) prohibits the further negotiation of the instrument; or (2) constitutes the in-

[45] Neg. Inst. Law, § 69 (39), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[46] Palmer v. Sargent, 5 Nebr. 223, 25 Am. Rep. 479; Hill v. Nutter, 82 Me. 199, 19 Atl. 170; Swank v. Nichols, 24 Ind. 199.

[47] Johnson v. Barrow, 12 La. Ann. 83.

[48] Parsons v. Jackson, 99 U. S. 434, 25 L. Ed. 457.

[49] Fawsett v. U. S. Nat. L. Ins. Co., 97 Ill. 11, 37 Am. Rep. 95; Hook v. Pratt, 78 N. Y. 371; Fassin v. Hubbard, 55 N. Y. 465. See note 12 L. R. A. 370.

dorsee the agent of the indorser; or (3) vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive."[50]

"*A restrictive indorsement confers upon the indorsee the right, (1) to receive payment of the instrument; (2) to bring any action thereon that the indorser could bring; (3) to transfer his right as such indorsee, where the form of the indorsement authorizes him to do so. But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.*"[51]

The restrictive indorsement may or may not restrict the circulation of the instrument, depending on the indorsement. There are two classes—collection indorsements and trustee indorsements. If it is a collection, it is no longer negotiable. "Pay to A," and then the words "for collection" written afterwards. That would indicate that A no longer had any right to negotiate that instrument, but only had a right to collect it.[52] But if it is "Pay to A, or order, for the use of B," or "A or order, as trustee for B," or words to that effect, then the very indorsement itself would indicate that A could place an order upon that indorsement, and that certainly would not restrict the instrument. A trustee indorsement containing the words "or order," or words of similar import, can be passed from hand to hand.[53]

An indorsement for collection is not a transfer of the title of the instrument to the indorsee, but merely constitutes him the general agent of the indorser to present the paper, demand and receive payment, and remit the proceeds.[54] An indorsement for collection made by the payee is cancelled by his subsequent indorsement to another indorsee for value.[55]

An indorsement of a bill or draft to a bank for deposit is

[50] Neg. Inst. Law § 66 (36), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[51] Neg. Inst. Law, § 67 (37), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[52] Peoples etc. Bank v. Craig, 63 Ohio St. 374, 59 N. E. 102, 81 Am. St. Rep. 639, 52 L. R. A. 872; Continental Nat. Bank v. Weems, 69 Tex. 489, 6 S. W. 802, 5 Am. St. Rep. 85; National City Bank of Brooklyn v. Wescott, 118 N. Y. 468, 23 N. E. 900.

[53] Leavitt v. Putnam, 3 N. Y. 494; Leland v. Parriott, 35 Ia. 454.

[54] Northwestern Nat. Bank v. Bank of Commerce, 107 Mo. 402, 17 S. W. 982, 15 L. R. A. 102; Boyer v. Richardson, 52 Neb. 156, 71 N. W. 981. See also notes 2 L. R. A. 699, 7 L. R. A. 852, 8 L. R. A. 42, 14 Am. St. Rep. 793, and 4 Am. St. Rep. 203.

[55] Brook v. Van Nest, 58 N. J. L. 162, 33 Atl. 382; Atkins v. Cobb, 51 Ga. 86.

common in business transactions.[56] Such an indorsement, like an indorsement for collection, constitutes a retention of title in the depositor in the absence of any practice or agreement to the contrary. It is likely, however, that the title to a check so indorsed which is credited, according to the practice prevailing between the bank and the indorser, to the account of the indorser, will be held to have passed to the bank. In any event a restrictive indorsement of an instrument for collection or deposit, or to the use of the indorser and for his benefit, in the absence of any other circumstances, will not divest the indorser of his title thereto, until the money is paid.

§ 106. Indorsement without recourse. An indorsement qualified with the words, "without recourse," "sans recourse," or "at the indorsee's own risk," renders the indorser a mere assignor of the title to the instrument, and relieves him from all responsibility for its payment,[57] though not from certain liabilities.

The indorsement without recourse means just as the word signifies. A says to B, "I indorse this over to you, but you have no recourse on me, providing the parties on the instrument are not financially able to pay this instrument. I don't stand good for the financial ability of the other parties who have preceded me on the instrument."

The form of the indorsement without recourse is "sans recourse," or "without recourse," or "at the indorsee's own risk," or such equivalent words. It transfers the legal title to the instrument. *"A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words 'without recourse,' or any words of similar import."*[58] It does not free him from all liability. He warrants that the instrument is in all respects genuine as to prior parties;[59] (2) that he has a good title and a right to transfer it;[60] and (3) that he has no knowledge of any fact to impair its validity.[61] In

[56] Barbour v. Bayon, 5 La. Ann. 304, 52 Am. Dec. 593.

[57] Cross v. Hollister, 47 Kan. 652, 28 Pac. 693; Corbett v. Fetzer, 47 Neb. 269, 66 N. W. 417; Drom v. Sherwin, 20 Colo. 234, 38 Pac. 56; Rice v. Stearns, 3 Mass. 225, 3 Am. Dec. 129. As to effect of indorsement without recourse see notes 12 L. R. A. 371, and 7 Am. St. Rep. 365.

[58] Neg. Inst. Law, § 68 (38), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[59] Lobdell v. Baker, 1 Metc. (Mass.) 193; Birmingham Nat. Bank v. Bradley, 103 Ala. 109, 15 So. 440, 49 Am. St. Rep. 17.

[60] Dumont v. Williamson, 18 Ohio St. 515; Palmer v. Courtney, 32 Neb. 781, 49 N. E. 754.

[61] Smith v. Corege, 53 Ark. 295, 14 S. W. 93; Hannun v. Richard-

other words, anyone who writes his name on a paper "without recourse" says "all parties to that paper are genuine." If it had been forged he would be held liable. He says, "I am the lawful holder of that paper, and I have title to it and know of no reason why you could not recover on it as a valid instrument, but one thing I do not guarantee; I do not guarantee the financial responsibility of the parties on that paper, but I do say that I hold the title to it just the same as if it were a horse I was selling you."

The regular indorser guarantees that the instrument will be paid by the other parties; that they are financially responsible, and if they do not pay it, he will see that it is paid. Indorsers "without recourse" do not make such guarantees as we have seen. "Without recourse" only applies to the person who writes those words after his name.

Now, strange to say, this does not interfere with the negotiability of the instrument. *"Such an indorsement does not impair the negotiable character of the instrument."*[62] Nor does it cause any suspicion on the character of the paper. In that way the indorser restricts his liability. A party might enlarge his liability by writing over his signature an absolute guarantee, waiving the usual demand and notice of non-payment: this is a facultative indorsement.

§ 107. Joint indorsement. If a bill or note be made payable to several persons not partners, the transfer can only be made by a joint indorsement of all of them.[63]

§ 108. Successive indorsements. When several persons indorse a bill or negotiable note in succession, the legal effect is to subject them to liability as to each other in the order they indorse.[64]

§ 109. Irregular or anomalous indorsement. When one not a party to an instrument places his name irregularly upon an instrument it is known as an irregular or anomalous indorsement.

If a note is made payable to A or bearer, and we should see

son, 48 Vt. 508; Challiss v. McCrum, 22 Kan. 157; Furgerson v. Staples, 82 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470.

[62] Neg. Inst. Law, § 68 (38), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[63] Pitcher v. Barrows, 17 Pick. (Mass.) 361, 28 Am. Dec. 306; Cooper v. Bailey, 52 Me. 230; Hungerford v. Perkins, 8 Wis. 267. See § 98, *supra*.

[64] Camp v. Simmons, 62 Ga. 73; Brewer v. Boynton, 71 Mich. 254, 39 N. W. 49; Knox v. Dixon, 4 La. 466, 23 Am. Dec. 488.

indorsements on the back of the note, X, Y and Z, we would find no difficulty since the instrument is made payable to bearer; or a blank indorsement would be regular and would be valid. But suppose the instrument is made payable to the order of A, and instead of the indorsement being A's, the first indorsement, we see is the indorsement of Y. Now, Y is not a party to the instrument; the instrument has been made, say, by X, and made payable to the order of A, while Y is a complete stranger to the instrument. What liability did he intend to assume by placing his name that way on the instrument? His liability is not governed by the law merchant. It does not make provision for any such person. Now, suppose that bill or note is made payable to the order of A, and A does not write his name upon the instrument, but the first name appearing on the back of the instrument is the name of B, the note or bill being made or drawn by X. X does not pay the note and A proceeds against B. It is important to know what the liability of the irregular party to the instrument is in order to know whether or not he should be given notice of the non-payment or non-acceptance of the instrument. If we hold this person who is irregular or anomalous upon the back of the instrument as an indorser, then we must perform the conditions which should be performed toward an indorser in order to hold him, and one of the conditions is, that he shall be given notice. It becomes important to know whether the name of B, or rather whether B himself is an indorser, or what his obligation is. Now, suppose B's signature was there when A took the note. Suppose when A took the note, he didn't know the maker; he said to B, "I don't know this man; I am not willing to count anything on his financial responsibility, but I tell you what I will do. If you will put your name on the back of that instrument, I will accept that as payment, because I know your responsibility; now, if you will lend credit to this instrument by putting your name on it, I will take the instrument." B says, "All right," and does so. But B is a stranger to the instrument. What is B's liability?

Regularly, A, the payee, should indorse first because the instrument is made payable to him, and consequently, being the first indorser and no one before him on the instrument, he could only hold the parties on the face of the instrument liable; but suppose the name of this irregular person precedes him on the paper as an indorser. Wouldn't the facts indicate that he took that instrument because the name of this irregular indorser is there? In the absence of the Negotiable Instruments Law, different jurisdictions have different rules.

The Negotiable Instruments Law provides:

"Where a person not otherwise a party to an instrument places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules: (1) If the instrument is payable to the order of a third person he is liable to the payee and to all subsequent parties. (2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer. (3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.[65]

As above stated, different jurisdictions have applied different rules as to the liability of the irregular or anomalous indorser. Some hold him as indorser,[66] some as maker,[67] and some as guarantor;[68] different jurisdictions make different liabilities for him. We must know what the liability of the anomalous indorser is that we may protect ourselves. If an irregular indorser is a maker or surety, it is not necessary to give him notice if the instrument is not paid, because if he is a joint maker he is primarily liable and he says absolutely that he will pay it. But if he is to be held as an indorser, his contract is to pay provided he is given notice, and if we have not given him notice, we cannot hold him liable.

The most general rules in the absence of the Negotiable Instruments Law, are as follows:

A person whose name is on the back of a bill or note, transferable by delivery, or payable to bearer, is to be deemed an indorser. A person signing on the back of a bill or note payable to order before the payee is *prima facie* presumed to be a second indorser, and not liable to the payee; but this may be rebutted by showing that his indorsement was given to give the maker credit with the payee, and he thus becomes liable as first indorser, the payee being permitted to indorse to him without recourse.

Parol evidence is always admissible in these cases to show what he intended to do under the circumstances.[69]

§ 110. Miscellaneous matters as to indorsement. The fol-

[65] Neg. Inst. Law, § 114 (64), where all cases directly or indirectly bearing upon or citing the Law are grouped. See notes 18 L. R. A. 33, and 72 Am. St. Rep. 676.

[66] Blakeslee v. Hewett, 76 Wis. 341; Phelps v. Vischer, 50 N. Y. 69; Gilbert v. Finkbeiner, 68 Pa. St. 243.

[67] Dow Law Bank v. Godfrey, 126 Mich. 521; McGraw v. Union Trust Co. (Mich.), 99 N. W. 758; Union Bank v. Willis, 8 Metc. (Mass.) 504; Childs v. Wyman, 44 Me. 441.

[68] Ranson v. Sherwood, 26 Conn. 437; Knight v. Dunsmore, 12 Ia. 35; Chandler v. Westfall, 30 Tex. 477; Webster v. Cobb, 17 Ill. 459.

[69] Good v. Martin, 95 U. S. 90; Kohn v. Consolidated Butter &

lowing miscellaneous provisions as to indorsement are found in the Negotiable Instruments Law:

"(a) Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature."[70]

"(b) Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability."[71]

"(c) Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue."[72]

"(d) Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated."[73]

"(e) An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise."[74]

"(f) The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument."[75]

Where an instrument is transferred by a special indorsement, the holder has no right to strike out the name of the person mentioned in such indorsement and insert his own name in the place thereof; nor can he strike out such name and convert such special indorsement into a blank indorsement.

"(g) Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable."[76]

Egg Co., 30 Misc. 725, 63 N. Y. S. 265. See note 18 L. R. A. 36.

[70] Neg. Inst. Law, § 73 (43), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[71] Neg. Inst. Law, § 74 (44), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[72] Neg. Inst. Law, § 75 (45), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[73] Neg. Inst. Law, § 76 (46).

[74] Neg. Inst. Law, § 77 (47), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[75] Neg. Inst. Law, § 78 (48), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[76] Neg. Inst. Law, § 80 (50), where all cases directly or indirectly bearing upon or citing the Law are grouped.

CHAPTER X.

NEGOTIATION—BY TRANSFER WITHOUT INDORSEMENT.

§ 111. In general.
112. By delivery.
113. By operation of law.

§ 111. In general. Transfer without indorsement may be made by one of two methods, either by delivery[1] or by operation of law.[2]

§ 112. By delivery. *"An indorsement in blank specifies no indorsee. And an instrument so indorsed is payable to bearer and may be negotiated by delivery."*[3]

One holding an indorsement in blank may transfer it without writing upon the instrument, and in this way he escapes some liability which he would otherwise have. He is only liable to the party who receives it from him, and as his name does not appear on the instrument, he has not added any credit to it.[4]

"Where an instrument payable to bearer is indorsed specially, it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement."[5]

"The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement."[6]

[1] Dunham v. Peterson, 5 N. D. 414, 67 N. W. 293, 57 Am. St. Rep. 556, 36 L. R. A. 232; United States v. Vermilye, 10 Blatchf. (U. S.) 230, 28 Fed. Cas. No. 16,618, affirmed 21 Wall (U. S.) 138; Marskey v. Turner, 81 Mich. 62, 45 N. W. 644; Kohn v. Watkins, 26 Kan. 691, 40 Am. Rep. 336; O'Conor v. Clarke (Cal., 1896) 44 Pac. 482. See also note 12 U. S. L. Ed. 399.

[2] Wooley v. Lynn, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Crist v. Crist, 1 Ind. 570; Hendric v. Richards, 57 Neb. 794, 78 N. W. 378; Billings v. Collins, 44 Me. 276; Roberts v. Hall, 37 Conn. 205, 9 Am. Rep. 308; Earhart v. Grant, 32 Ia. 481.

[3] Neg. Inst. Law, § 64 (34), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[4] McDonald v. Bailey, 14 Me. 101; Crenshaw v. Jackson, 6 Ga. 509, 50 Am. Dec. 361; Smith v. Carden, 1 Swan. (Tenn.) 28.

[5] Neg. Inst. Law, § 70 (40), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[6] Neg. Inst. Law, § 65 (35), where all cases directly or indirect-

The person who in getting a negotiable note or bill of exchange payable to order, neglects to have the indorsement put on it, gets it just as if he had received it by assignment and takes it subject to the equities.[7] It is his duty to notify the parties on the instrument the same as in an assignment. If any equities accrue between the time he received the instrument and the time he secured the indorsement, the equities would run against it.[8] When a person offers you an instrument by delivery when it is payable to bearer, you are not obliged to take that instrument without indorsement; if it is not indorsed by the person offering it, you need not take it.

"Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires in addition the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made."[9]

§ 113. By operation of law. Suppose A becomes a bankrupt and has in his possession an instrument calling for $500, payable to X. That instrument vests in A's assignee in bankruptcy. There is a transfer by operation of law.[10] So, if a person dies leaving a certain note payable to himself, his administrator or executor gets title to that paper by operation of law.[11]

The person who gets the paper gets just as good title as the dead man had, if it passes or is transferred by operation of law.[12]

ly bearing upon or citing the Law are grouped.

[7] Hopkins v. Manchester, 16 R. I. 663, 23 S. E. 630, 55 Am. St. Rep. 779; Hersey v. Elliott, 67 Me. 526, 24 Am. Rep. 50; Pavey v. Stauffer, 45 La. Ann. 353, 12 So. 512, 19 L. R. A. 716. But see Brown v. Wilson, 45 S. C. 519, 23 S. E. 630, 55 Am. St. Rep. 779.

[8] Osgood v. Artt, 17 Fed. 575; Goshen Nat. Bank v. Bingham, 118 N. Y. 349, 23 N. E. 180. But see Beard v. Dedolph, 29 Wis. 130.

[9] Neg. Inst. Law, § 79 (49), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[10] Roberts v. Hall, 37 Conn. 205, 9 Am. Rep. 308.

[11] Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Crist v. Crist, 1 Ind. 570; Rand v. Hubbard, 4 Metc. (Mass.) 256.

[12] Billings v. Collins, 44 Me. 271; Earhart v. Gant, 32 Ia. 481; Nichols v. Hill, 42 S. C. 28, 19 S. E. 1017.

CHAPTER XI.

NEGOTIATION—BY ASSIGNMENT.

§ 114. In general.
115. Assignment by a separate writing.
116. Liability of assignor of bills and notes payable to bearer.
§ 117. Rights of the parties.
118. Transfer by legal process.

§ 114. Assignment in general. Bills of exchange and promissory notes are negotiated either by indorsement, transfer by delivery without indorsement, or assignment. Only negotiable instruments can be transferred by indorsement. An instrument payable to bearer may be transferred by delivery without indorsement.[1] A non-negotiable instrument is transferred by assignment.[2] The difference between the transfer of a negotiable and a non-negotiable instrument is that the latter is transferred subject to all defenses that might have been set up against the original payee,[3] while the former is taken free from equitable defenses by a bona fide holder. Therefore the effect of the assignment of a non-negotiable instrument is that the party holding the right drops out of the contract and another takes his place. The assignee is substituted in place of the assignor. The assignee and every subsequent person to whom the instrument comes by assignment may be considered as the person who made the instrument in the first instance, and as having said and done everything in making the instrument which the original assignor said or did. Hence if the original assignor said or did something which under the ordinary law of such contracts would prevent him from enforcing the contract, or asserting his right against the other party to the original contract, the assignee, although he knows nothing of the original transaction, may be deemed to have said and done the same things. And further, if any subsequent assignee from whom, as an assignor, the holder in turn derives the contract, has done anything to prevent its enforcement against the original party, the last holder cannot

[1] Dunham v. Peterson, 5 N. D. 414, 67 N. W. 293, 57 Am. St. Rep. 556, 36 L. R. A. 232.

[2] Franklin v. Twogood, 18 Ia. 515.

[3] Trustees of Union College v. Wheeler, 61 N. Y. 88; Warner v. Whittaker, 6 Mich. 133; Tims v. Shannon, 19 Md. 296.

enforce it against the original party. Each assignee takes his chances as to the exact position in which any party making an assignment of it stands. And as it is called in law, the assignee takes the contract subject to equities; that is, to defenses to the contract which would avail in favor of the original party up to the time the notice of the assignment is given to the person against whom the contract is sought to be enforced.

A person taking an instrument negotiable by the law merchant and writing an assignment of that instrument on a separate piece of paper, takes it subject to the rules applying to assignments; that is, he takes it subject to the equities the parties had on the instrument before the assignment had been made to him. One might think that a certain instrument is in the hands of A, and that he being indebted to A, say, in the sum of $500, that when A comes to him and wants to become indebted to him to the extent of that sum, he would be safe in making those advances to A. He is, until he gets notice to the contrary. If the original instrument has gotten into the hands of someone else by assignment, it is his duty to notify the obligor instantly of that fact so that the conditions existing between him and the party will remain unchanged. In other words, when you get an instrument by assignment, it is your duty immediately to notify the person liable on the instrument that you hold that instrument and that you hold it by assignment.[4] But it is not your duty so to do if the paper is negotiable by the law merchant.

§ 115. Assignment by a separate writing. The mode of assignment of non-negotiable instruments differs in no respect from that of any other contract.[5] Although some sort of written assignment is customarily employed, it may be written either on the instrument itself or on a separate piece of paper.[6] The instrument may be assigned on a separate paper so as to authorize an action thereon in the name of the assignee.[7] But the assignment of a mortgage which was given as security for the payment of a promissory note will not operate as an assignment of the note.[8] This is the result of statutes in many states which declare that the legal title of the note cannot be assigned by a separate in-

[4] Van Buskirk v. Insurance Co., 14 Conn. 141; Merchants & Mechanics Bank v. Hewett, 3 Ia. 93; Richards v. Griggs, 16 Mo. 416.

[5] Maxwell v. Goodman, 10 B. Mon. (Ky.) 286; Stiles v. Farrar, 18 Vt. 444; Halsey v. Dhart, 1 N. J. L. 109.

[6] Mitchell v. Walker, 17 Fed. Cas. No. 9,670; Deshler v. Guy, 5 Ala. 186.

[7] Morris v. Poillon, 50 Ala. 403; Thornton v. Crowther, 24 Mo. 164; Clapp v. Cedar County, 5 Ia. 15, 68 Am. Dec. 678.

[8] French v. Turner, 15 Ind. 59; Doll v. Hollenbeck, 19 Nebr. 639, 28 N. W. 286. But see Coombs v.

strument. It is presumable that an oral assignment, accompanied by a delivery of the instrument, would pass a good title to the assignee.[9]

§ 116. Liability of assignor of bills and notes payable to bearer. The assignor of bills and notes payable to bearer assumes certain liabilities by way of guaranty. But his liability is not so extensive as that of an indorser of negotiable paper.[10] The liability of an assignor and indorser differs principally in respect to the guaranty of the solvency of the parties to the instrument and in the guaranty that the instrument will be honored at maturity.[11] The assignor is not responsible for the solvency of the parties to a bill or note payable to bearer, neither can he be held responsible if the instrument is not paid when due, unless he had knowledge of the insolvency of the parties. The assignor warrants that the parties to the instrument were competent to contract and if any one of them is incompetent, on account of infancy, marriage, lunacy and the like, the assignor is responsible to his assignee.[12] There is one exception to this rule, and that is in the case of government securities.

The assignor of an instrument payable to bearer warrants that the signatures and the body of the instrument are genuine,[13] so that if either proves to be a forgery, the money he received for the transfer can be recovered back. The assignor also warrants that he does not know anything affecting the validity or value of the instrument. To attempt to sell an instrument which one knows to be worthless is a fraud upon the purchaser, and naturally vitiates the contract of sale.[14]

The assignor also guarantees to the purchaser that he has a good title to the instrument and that he has a right to convey it away. If he attempts to transfer property to which he has

Warren, 34 Me. 89; Cortelyou v. Jones (Cal., 1900), 61 Pac. 918.

[9] Moore v. Miller, 6 Oreg. 254, 25 Am. Rep. 518; Sackett v. Montgomery, 57 Nebr. 424, 77 N. W. 1083, 73 Am. St. Rep. 522; Guy v. Briscoe, 6 Bush. (Ky), 687.

[10] Cochran v. Strong, 44 Ga. 636; Boylan v. Dickerson, 3 N. J. L. 24.

[11] Hecht v. Batcheller, 147 Mass. 335, 17 N. E. 651, 9 Am. St. Rep. 708; Lyons v. Miller, 6 Gratt. (Va.) 427, 52 Am. Dec. 129; Milligan v. Chapman, 75 Me. 306, 46 Am. Rep. 486.

[12] Butler v. Slocomb, 33 La. Ann. 170, 39 Am. Rep. 265; Edmunds v. Rose, 5 N. J. L. 547, 18 Atl. 748, 14 Am. St. Rep. 704; Lobdell v. Baker, 3 Metc. (Mass.) 469.

[13] Rhodes v. Jenkins, 18 Colo. 49, 31 Pac. 491, 36 Am. St. Rep. 263; Wood v. Sheldon, 42 N. J. L. 421, 36 Am. Rep. 523; Zwazey v. Parker, 50 Pa. St. 441, 88 Am. Dec. 549.

[14] Brown v. Montgomery, 20 N. Y. 287, 75 Am. Dec. 404; Delaware Bank v. Jarvis, 20 N. Y. 226; May v. Dyer, 57 Ark. 441, 21 S. W. 1064.

no title he is held to have committed an actual or constructive fraud upon the purchaser, according to the knowledge or ignorance of the vendor in respect to his want of title.[15]

§ 117. **Rights of parties.** In the transfer of a negotiable instrument by indorsement the indorsee is the holder in due course and takes it free from all defenses, while in the transfer of a non-negotiable instrument by assignment the assignee takes the same subject to any equities between the original parties thereto, and any defenses which may be interposed by the maker. The assignment of a negotiable instrument confers upon the holder only such rights as he would acquire upon the assignment of a non-negotiable instrument.[16] The assignee of a non-negotiable instrument holds it subject to all equities or counterclaims between the original parties existing at the time of the assignment.[17] The maker of a note may set up the same defenses against it in the hands of the assignee that he might set up if it were held by the payee. But all such defenses and equities must have existed in favor of the maker prior to the assignment. The equities and defenses which can be asserted against the assignee are only such as relate to the contract between the original parties, and therefore it has been held that the assignee of a non-negotiable note is not bound to inquire whether the note was made to defraud creditors.[18]

§ 118. **Transfer by legal process.** Property may be transferred to a creditor in satisfaction of his claim by attachment, garnishment and execution. These processes are created by statute, and whether commercial paper can be transferred by them for the satisfaction of the holder's debts depends upon the language of the particular statute under which the question arises.[19]

It is generally held that promissory notes and other commercial instruments cannot be garnisheed in the hands of an agent, in an attachment proceeding against the payee. Nor is commercial paper attachable for the debts of the payee, when it is in the hands of a receiver for the benefit of creditors, nor when

[15] Furgerson v. Staples, 82 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Merchants Nat. Bank v. Spates, 41 W. Va. 27, 23 S. E. 681, 56 Am. St. Rep. 828.

[16] May v. Dyer, 57 Ark. 441, 21 S. W. 1064; Johnson v. Welby, 2 B. Mon. (Ky.) 122; Cochran v. Strong, 44 Ga. 636.

[17] Rockwell v. Daniels, 4 Wis. 432; Young v. South Tredegar Iron Co., 85 Tenn. 189, 4 Am. St. Rep. 752.

[18] Dalrymple v. Hillenbrand, 62 N. Y. 5, 20 Am. Rep. 438.

[19] Sheets v. Culver, 14 La. Ann. 449, 33 Am. Dec. 593; Hubbard v. Williams, 1 Minn. 54, 55 Am. Dec. 66.

it is placed in the hands of an agent to collect and apply the proceeds to the payment of a specific debt; and even when it is merely placed in the hands of an agent for collection or for any other purpose, resulting in benefit to the payee. It is not even subject to attachment, if the agent delivers it up to the attaching officer.

CHAPTER XII.

OF THE NATURE OF THE LIABILITIES OF THE PARTIES.

§ 119. In general.
120. Maker.
121. Drawer.
122. Acceptor.
§ 123. Indorser.
124. Accommodation and accommodated parties.
125. Agent.

§ 119. In general. The different parties to Negotiable Instruments have different liabilities. Some parties are primarily liable, while others are secondarily liable.

The Negotiable Instruments Law provides:

"The person primarily liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are secondarily liable."[1] This is also the law generally.

§ 120. Maker. As to the liability of the maker of a negotiable instrument, the Negotiable Instruments Law provides:

"The maker of a negotiable instrument by making it engages that he will pay it according to its tenor and admits the existence of the payee and his then capacity to indorse."[2]

He not only promises the payee to pay it according to its tenor, but he promises any subsequent holder who is legally entitled to the instrument the same.[3] When the instrument is payable to bearer, it is not necessary that the name of every one through whose hands it passes should appear on the instrument, because it is made payable to bearer.[4] Anyone bearing the paper can recover against any party on the instrument, the maker, the payee or any of the indorsers. In order to recover against one who has made it payable specially to some one, it is necessary to prove the signature of the one who has made it payable and the signature of the one to whose order it is made payable, and also the signature of any other party you are trying to recover against. The payee, when he indorses the instrument, becomes liable to parties who take the instrument after his signature is upon it.

[1] Neg. Inst. Law, § 3 (192), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[2] Neg. Inst. Law, § 110 (60), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[3] See *bona fide* holder. Chap. XIII.

[4] Bitzer v. Wagar, 83 Mich. 223, 47 N. W. 210; Goodpaster v. Voris, 8 Ia. 334, 74 Am. Dec. 313.

§ 121. **Drawer.** The general law as to the liability of the drawer is clearly set out in the Negotiable Instruments Law in the following language:

"The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder or to any subsequent indorser who may be compelled to pay it, but the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder."[5]

The drawer by signing the instrument thereby states to the payee that if he will take it to the drawee that the latter will accept it and pay it, and if he does not and the payee gives notice to the drawer of the failure on the part of the drawee, then the drawer agrees to pay it himself. He agrees to pay it if the drawee does not, provided notice in a reasonable time is given him of that fact so that he can make himself safe.

The Negotiable Instruments Law contains the following provision as to the liability of the drawer or indorser in case of a qualified acceptance:

"The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto."[6]

§ 122. **Acceptor.** The general law as to the liability of the acceptor is clearly set out in the Negotiable Instruments Law in the following section:

"The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance, and admits: (1) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and (2) the existence of the payee, and his then capacity to indorse."[7]

[5] Neg. Inst. Law, § 111 (61).
[6] Neg. Inst. Law, § 230 (142), where all cases directly or indirectly bearing upon or citing the Law are grouped.
[7] Neg. Inst. Law, § 112 (62),

When the acceptor accepts it, being the drawee, he thereby says to the payee, "I recognize that signature as that of the drawer; I have funds in my possession belonging to him to the amount of this instrument, and I promise that I will accept this and I do accept it, and since it is payable ten days after sight, you bring that instrument around in ten days and I will pay it." Now, this instrument having been indorsed by the payee to A, what is the liability of the acceptor to A? Why, the acceptor says to A, "You present that instrument to me and I will pay it. I recognize that signature of the drawer, and I will vouch for that; the payee is a party who is capable and has capacity to indorse the instrument; you present the instrument to me and I will pay it." That is his contract with the indorser or holder, A. What is his contract with the drawer? It is, that he has funds in his hands belonging to the drawer, and he says to A, the drawer, "You draw upon me any time and I will accept and pay the bill. If I don't, then I am liable to you in such damages as you may suffer by my refusal to accept and pay the instrument."[8] The liability as to the indorsers on the back of the instrument is substantially the same.

Other provisions as to the liability of the acceptor found in the Negotiable Instruments Law are as follows:

"When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon."[9]

"Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged."[10]

§ 123. The indorser. The indorser engages (a) that the negotiable instrument will be accepted or paid, as the case may be, according to its purport;[11] but this engagement is conditioned upon due presentment or demand, and notice;[12] (b) that it is in every respect genuine; (c) that it is the valid instrument it pur-

[8] Pilkington v. Woods, 10 Ind. 432; Thompson v. Flower, 1 Mart. (N. S.) La. 301; Drew v. Phelps, 18 N. H. 572.

[9] Neg. Ins. Law, § 314 (182), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[10] Neg. Ins. Law, § 315 (183), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[11] Van Fleet v. Sledge, 45 Fed. 743; Prentiss v. Savage, 13 Mass. 20; Woodward v. Lowry, 74 Ga. 148. As to indorser's liability see 11 Am. St. Rep. 930.

[12] Hamer v. Brainerd, 7 Utah 245, 26 Pac. 299, 12 L. R. A. 434; Wylie v. Colter, 170 Mass. 356, 49 N. E. 746, 64 Am. St. Rep. 305;

ports to be;[13] (d) that the ostensible parties are competent;[14] (e) and that he has good title to it and the right to indorse it.[15] And if it turns out that any of these engagements except that first named are not fufilled, the indorser may be sued for recovery of the original consideration which has failed, or be held liable as a party, without proof of demand and notice.

The above rights inure to the holder of the bill, and he can sue upon it or further negotiate it, and though guilty of a fraud in parting with it, nevertheless he can give title to a *bona fide* holder for value without notice who takes it before maturity. Any irregularity, as a torn paper, or something similar, patent on the face of a bill, is equivalent to notice, and the holder who takes such an instrument will not be considered an innocent holder.[16] In an action by the *de facto* holder, it may be shown that he holds adversely to the true owner, and that he is agent or trustee for another person, and then any defense or set-off available against such person is available against the holder.

"Every indorser who indorses without qualification warrants to all subsequent holders in due course (1) the matter and things mentioned in subdivisions one, two and three of the next preceding section; and (2) that the instrument is at the time of his indorsement valid and subsisting. And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay that amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it."[17]

"Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser."[18]

Nash v. Harrington, 1 Aik. (Vt.) 39, 16 Am. Dec. 672; McLanahan v. Brandon, 1 Mart. (N. S.) La. 321, 14 Am. Dec. 188. See note 16 U. S. L. Ed. 260.

[13] Furgerson v. Staples, 82 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Thrall v. Newell, 19 Vt. 202, 47 Am. Dec. 682. As to when indorser can allege defenses, see note 7 U. S. L. Ed. 744.

[14] Butler v. Slocomb, 33 La. Ann. 170, 39 Am. Rep. 265; Edmunds v. Rose, 51 N. J. L. 547, 18 Atl. 748, 14 Am. St. Rep. 704.

[15] Furgerson v. Staples, 82 Me. 159, 19 Atl. 158, 17 Am. St. Rep. 470; Merchants Nat. Bank v. Spates, 41 W. Va. 27, 23 S. E. 681, 56 Am. St. Rep. 828. As to warranty implied by indorsement see note 7 Am. St. Rep. 365.

[16] Skillman v. Titus, 32 N. J. L. 96; Chattanooga First Nat. Bank v. Stockwell, 92 Tenn. 252, 21 S. W. 523, 20 L. R. A. 605.

[17] Neg. Inst. Law, § 116 (66), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[18] Neg. Ins. Law, § 117 (67), where all cases directly or indirectly bearing upon or citing the Law are grouped.

"As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsers who indorse are deemed to indorse jointly and severally."[19]

What liability does an indorser have to the preceding indorsers? He can recover against any who precede him, but none who succeed him.

"The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon."[20]

In other words, the parties who have received the instrument and passed it on to someone else are estopped to set up that the other parties did not have capacity. Of course, a minor has a right to set up the defense that he himself did not have the capacity. These parties, then, guarantee or warrant the capacity of the previous parties to make the instrument, but this does not estop the party who is really incapacitated from setting that up.

There is some conflict as to the liability of an indorser without recourse, but the general rule is that a person who indorses without recourse makes all warranties any other indorser does, except that he does not warrant the capacity financially of the other parties to pay. He does not agree to indemnify the other parties on the instrument. The indorser without recourse makes this representation and warranty to every person who gets the instrument, that the parties had capacity and the instrument is a valid instrument as to form, etc.,[21] but he does not warrant the financial responsibility of the parties. By placing his name there, he makes that contract with everybody who takes the instrument.

When an instrument is made payable to bearer and has passed from hand to hand by mere delivery, the indorsee or holder has no right to recover from any other party who has passed it on by delivery unless that party's name appears on the instrument. There can be no recovery against the party whose name is not on the instrument, unless the party who is endeavoring to recover from him has immediately received that instrument from

[19] Neg. Inst. Law, § 118 (68), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[20] Neg. Inst. Law, § 41 (22), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[21] Lobdell v. Baker, 3 Metc. (Mass.) 469; Watson v. Cheshire, 18 Ia. 202, 87 Am. Dec. 382; Hanmun v. Richardson, 48 Vt. 508, 21

him. Those are the liabilities of the indorser without recourse and the indorser by mere delivery.

The Negotiable Instruments Law covers these principles in the following section:

"Every person negotiating an instrument by delivery or by a qualified indorsement warrants[22] *(1) that the instrument is genuine and in all respects what it purports to be; (2) that he has a good title to it; (3) that all prior parties had capacity to contract; (4) that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes."*

There is the following provision as to the liability of an agent or broker who negotiates an instrument without indorsement:

"Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section one hundred and fifteen of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent."[23]

§ 124. Accommodation and accommodated parties. The following provision is found in the Negotiable Instruments Law:

"An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.[24]

Here is a lending of the credit of one person to another for accommodation. A wishes to pay an obligation of $500 and he has no credit; he says to B: "Put your name on this paper and I will have money by the time it comes due and pay it and I will see that you do not suffer any damage." So B signs. When

Am. Rep. 152; Ware v. McCormack, 96 Ky. 139, 28 S. W. 157.

[22] Neg. Inst. Law, § 115 (65), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[23] Neg. Inst. Law, § 119 (169), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[24] Neg. Inst. Law, § 55 (29), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to liability of accommodation maker and indorser see notes 5 L. R. A. 698, and 31 Am.

that instrument becomes due, if A does not pay and B has to, then B can recover from him. But since B has received no consideration there can be no recovery as against him by A.

Suppose A lends you his credit for a special purpose and you use that credit for some other purpose and the person who takes that credit knows that it has been loaned for a particular purpose, then the person who takes that credit cannot recover. He cannot recover because he knows that the credit has been diverted from the purpose for which it was given—he has notice.

Where a bill is drawn or accepted, or a note made or indorsed for accommodation, with an agreement that it shall be used for a particular purpose, any diversion in its use operates as a discharge of the accommodation party as to all other parties who have knowledge of such diversion.[25]

It is immaterial that paper executed or indorsed for accommodation is not used in precise conformity with agreement, when it does not appear that the accommodation party had any interest in the manner in which the paper was to be applied.[26] No change in the mere mode or plan of raising the money, though not applied to the purpose intended by the accommodation party, will constitute a misappropriation. In order to constitute a misappropriation, there must be a fraudulent diversion from the original object and design; and it is now well settled that where a note is indorsed for the accommodation of the maker, to be discounted at a particular bank, it is no fraudulent misappropriation of the note, if it is discounted at another bank or used in the payment of a debt or otherwise for the credit of the maker.[27] If the note has effected the substantial purpose for which it was designed by the parties an accommodation maker or indorser cannot object that the accommodation was not effected in the precise manner contemplated, where there is no fraud, and the interest of the indorser is not prejudiced.[28]

It is the general rule that an accommodation party lends his credit only for the period specified in the instrument, that is, until its maturity; and if transferred thereafter such party

St. Rep. 745. And as to accommodation indorsement by bank see note 23 L. R. A. 836.

[25] Stoddard v. Kimball, 6 Cush. (Mass.) 469; Daggett v. Whiting, 35 Conn. 372; Small v. Smith, 1 Denio. (N. Y.) 583.

[26] Felters v. Muncie Nat. Bank, 34 Ind. 256; Quinn v. Hard, 43 Vt. 375.

[27] Powell v. Waters, 17 Johns. (N. Y.) 176; Bank of Chenango v. Hyde, 4 Cow. (N. Y.) 567.

[28] Jackson v. Bank, 42 N. J. L. 178; Dum v. Weston, 71 Me. 270; Briggs v. Boyd, 37 Vt. 538. As to fraudulent diversion see note 31 Am. St. Rep. 748.

should not be made liable except as an ordinary party to commercial paper.[29]

The presumption is that such an indorser is subject to the same liabilities as are imposed by the statute upon general indorsers.

And their rights are largely the same. Thus one indorsing an instrument for the accommodation of the maker cannot be charged without a demand.

While a corporation has, under certain circumstances, the general power to bind itself by promissory notes and contracts of indorsement, made in the general course of its business, it has no power to make or indorse notes for the accommodation of others. The validity of such paper can also be assailed upon the theory that the officer of a corporation who executes it cannot so bind the corporation in a matter not connected with its business, or in which it has no beneficial interest. But in the hands of a *bona fide* purchaser for value, accommodation paper duly executed by the officers of a corporation can be enforced against the corporation.[30] The rules applicable to the rights of *bona fide* holders of accommodation paper, signed by one of a partnership without the consent of his copartners, can also be applied in the case of similar paper executed by the officers of a corporation.

Successive accommodation parties are liable to each other in succession, according to the order in which their names appear upon the instrument.[31] The reason for this rule may be found in the presumption that each accommodation indorser placed his name upon the instrument trusting in the strength of the prior accommodation indorsers. Facts may be shown as in the case of other indorsers to show that the liability is joint because of an agreement between them to be bound jointly and not severally. If no such agreement is shown such indorsers are not co-sureties and there can be no right of contribution among them.[32]

§ 125. Liability of agent. The general rule as to the liabil-

[29] Chester v. Dorr, 41 N. Y. 279; Bower v. Hastings, 36 Pa. St. 285; Battle v. Weems, 44 Ala. 105.

[30] Nat. Bank v. Young, 41 N. J. L. 531, 7 Atl. 488; Am. Trust & Savings Bank v. Gluck, 68 Minn. 129, 70 N. W. 1085; Jacobs Pharmacy Co. v. Trust Co., 97 Ga. 573, 25 S. E. 171.

[31] Aiken v. Barkley, 2 Speers (S. C.) 747, 42 Am. Dec. 317; U. S. Bank v. Beirne, 1 Gratt. 234, 42 Am. Dec. 551; Moody v. Findley, 43 Ala. 167.

[32] Kirschner v. Conklin, 40 Conn. 77; Moore v. Cushing, 162 Mass. 594, 39 N. E. 177, 44 Am. St. Rep. 393; U. S. Bank v. Beirne, 1 Gratt 234, 42 Am. Dec. 551.

"Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title."[4]

§ 127. Good faith or bona fide. The term *"bona fide* holder" or holder in good faith, means a holder according to the law merchant, without knowledge or notice of equities of any sort which could be set up against a prior holder of the instrument.[5] Absence of knowledge of the defense, when the instrument was taken, is the essential element in the matter of *bona fides.*[6]

That is, the holder, in order to be entitled to protection against offsets and equities and defenses based upon frauds, pleaded by prior parties, must have acquired the paper in good faith from his predecessor. If the holder's acquisition of the paper be in any respect fraudulent he cannot claim the position of a *bona fide* holder.[7]

The Negotiable Instruments Law provides:

"The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud."[8]

§ 128. Holder for value. We have taken up the consideration of the expression *"bona fide* holder for value without notice"[9] and *"bona fide* purchaser for value without notice."[10] This expression becomes important in case of equities or personal defenses. If there are certain equities or personal defenses against

[4] Neg. Inst. Law, § 98 (59), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[5] Stephens v. Olson, 62 Minn. 295, 64 N. W. 898; Whistler v. Forster, 14 C. B. N. S. 248, 108 E. C. L. 248.

[6] Helner v. Krolick, 36 Mich. 371; Raphael v. Bank of England, 17 C. B. 161, 84 E. C. L. 161.

[7] Angier v. Brewster, 69 Ga. 362; Hickson v. Earley, 62 S. C. 42, 39 S. E. 782.

[8] Neg. Inst. Law, § 94 (55), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[9] Matthews v. Poythress, 4 Ga. 287; Limerick Nat. Bank v. Adams, 40 Atl. 166, 70 Vt. 132.

[10] Young v. Schofield, 132 Mo. 650, 34 S. W. 497; Ten Eyck v. Whitbeck, 135 N. Y. 40, 31 N. E. 994, 31 Am. St. Rep. 809; Scott v. McGraw, 3 Wash. St. 675, 29 Pac. 260.

an instrument a *bona fide* holder for value without notice may nevertheless recover against any party to the instrument. Of course, any party to an instrument who had an equity or personal defense can be recovered against by a *bona fide* holder for value without notice, but the *bona fide* holder for value cannot recover against one who has an absolute defense, for such defense attaches to the thing itself and can be set up against anybody. But, if the defense is a personal defense, it cannot be set up successfully.[11] There is considerable in the expression "*bona fide* holder for value." What is a "holder for value" and a "*bona fide* holder without notice"? A person is a holder for value who has given in return value, just the same as in any contract, or according to the Negotiable Instruments Law: "*Value means valuable consideration.*"[12]

There are two different classes of cases, where there is some conflict of authority as to whether or not value has been given. One instance is where an instrument is given as collateral security. A not only makes his own note but gives the note of B as collateral security, and the better opinon is, that a note given as collateral security has been given for value, and a person who has an equity or a personal defense which he could set up against another could not set it up successfully in such a case, because the person who holds the security holds it for value.[13] Some jurisdictions hold that the collateral note must be given at the time of the loan;[14] they say it must be in forbearance to sue, or extension of time, in order that some consideration may arise for the giving of the security.[15] By the weight of authority, the better rule is to the effect that the holder of a collateral note is a holder for value and may recover from the parties liable upon the instrument.[16]

It is now settled in those states which have adopted the act[17] that a note transferred before maturity to a holder in due course,

[11] As to personal and real defenses see, Chap. XIV.

[12] Neg. Inst. Law, § 2 (191), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[13] Silbley v. Robinson, 10 Shep. (Me.) 70; Swift v. Tyson, 16 Pet. 1; Grocers' Bank v. Penfield, 69 N. Y. 502, 25 Am. Rep. 231.

[14] Vann v. Marbury, 100 Ala. 438, 46 Am. St. Rep. 75, 14 So. 273, 23 L. R. A. 325.

[15] Smith v. Bibber, 82 Me. 34, 19 Atl. 89, 17 Am. St. Rep. 464; Porter v. Andrus, 10 N. D. 558, 88 N. W. 567.

[16] Maitland v. Citizens' Nat. Bank, 40 Md. 540, 17 Am. Rep. 620; Best v. Krell, 23 Kan. 482, 33 Am. Rep. 185; Birket v. Edward, 68 Kan. 295, 74 Pac. 1100.

Contra, Porter v. Andrus, 10 N. D. 558, 88 N. W. 567; Rosborough v. Messich, 6 Ohio St. 448, 67 Am. Dec. 346; Vollertein v. Howell, 37 Tenn. (5 Sneed) 441.

[17] Neg. Inst. Law, § 57 (25),

as collateral security for a pre-existing debt, is transferred for value, and the holder takes it free from defenses or set-offs existing between the original parties.

The second class of instruments is where a note is given for a pre-existing debt; for example when an account, or something of that kind comes due, a note is given for the debt. What was the consideration? All the goods have been bought and used; it is a debt; can we say there has been a consideration? In some jurisdictions, the note itself is enough consideration; other jurisdictions say that there must be some new consideration, forbearance or something of that nature. Still other jurisdictions hold that it must be in extinguishment of the debt. In other words, if A had an account of $50 and that account is due and unpaid, and A gives a promissory note for $50 and that is taken in extinguishment of the debt, and if afterward any proceeding is brought on that note, the holder of the note would be a holder for value; or, if an extension of time has been given, then the holder of the instrument would be a holder for value.

Conceding that it is an established rule that an antecedent or pre-existing debt constitutes value, there can be no question but that where paper is transferred in payment of a pre-existing debt, the transferee becomes a holder for value, and takes the paper free from all defenses and equities existing between the original parties.[18]

Those two classes of cases are the ones upon which there is a great, possibly the greatest, diversity of opinion. In all other cases it is whether or not value was given, that is, the principles of contract are applied.

"*Where value has at any time been given for the instrument the holder is deemed a holder for value in respect to all parties who became such prior to that time.*"[19]

Mere discount and credit do not of themselves constitute a *bona fide* purchaser for value. To occupy that position the holder must actually have parted with something of value for the note. Thus, where a bank discounted a note for a company, and credited it with the amount and the credit on account of other deposits, subsequently increasing so that at the time of suit on the note

where all cases directly or indirectly bearing upon or citing the Law are grouped.

[18] Yellowstone Nat. Bank v. Gagnon, 19 Mont. 402, 48 Pac. 762, 61 Am. St. Rep. 520, 44 L. R. A. 243; Breckenridge v. Lewis, 84 Me. 349, 24 Atl. 864, 30 Am. St. Rep. 353; Herman v. Gunter, 83 Tex. 66, 18 S. W. 428, 29 Am. St. Rep. 312.

[19] Neg. Inst. Law, § 52 (26), where all cases directly or indirectly bearing upon or citing the Law are grouped.

the bank had actually paid nothing for it, it was held not a purchaser for value, and that its remedy was to tender the note back to the company, and cancel the credit.[20]

"Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien."[21]

A banker's lien would protect a bank having possession of the bills or notes of a customer to the extent of the balance due such bank from such customer;[22] and a transfer of such an instrument to any other holder as collateral security for the payment of a debt due such holder from the person who transfers the note, makes the holder a pledgee and gives him a lien to the extent of the debt.[23]

§ 129. Holder without notice. The third part of the principle is that the holder must be one "without notice," a *bona fide* holder, a holder for value "without notice." By that we mean that the person must not have any notice, either actual or constructive, of these defects.[24] If he does have notice, he cannot recover against any one who has these defenses. If a person takes an instrument knowing of the equities, they can be set up against him.

The Negotiable Instruments Law provides:

"Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him."[25]

An amount paid for an instrument, if a trifling sum, may of itself establish notice. But it is difficult to lay down the exact line of demarcation and state what proportion the amount paid must bear to the face of the paper in order to charge the purchaser *prima facie* with notice or raise the presumption of bad faith on his part.[26] But it may be said that the consideration

[20] But see Benton v. German Am. Nat. Bank, 122 Mo. 332, 26 S. W. 975; Israel v. Gale, 77 Fed. 532, 45 U. S. App. 211, 23 C. C. A. 275.

[21] Neg. Inst. Law, § 53 (27), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[22] Nat. Bank v. Ins. Co., 104 U. S. 54; Straus v. Tradesman Nat. Bank, 122 N. Y. 379; Clark v. Bank, 160 Mass. 26.

[23] Anderson v. Bank, 98 Mich. 543; Stoddard v. Kimball, 6 Cush. 469.

[24] Limerick Nat. Bank v. Adams, 70 Vt. 132, 40 Atl. 168; Stalker v. McDonald, (N. Y.) 6 Hill 93, 40 Am. Dec. 389.

[25] Neg. Inst. Law, § 93 (54), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[26] Williams v. Huntington, 68 Me. 590, 13 Atl. 336, 6 Am. St.

should be so utterly trifling as to bear upon its face the impress of fraud to leave open no reasonable conjecture but that the purchaser must have known, from the very nature of the facts, that they could not have originated from any but a corrupt source. The known solvency of prior parties would of course strengthen the argument of implied notice and bad faith wherever they were alleged. If the amount paid for the paper were not so insignificant as, *per se*, to charge the transferee with notice, it might still be so inadequate as to be a pregnant fact, to be given due consideration in connection with others in determining whether he should be charged with notice or not.[27]

If the amount which the holder offers to take for a negotiable instrument is insignificant as compared to its face value, it might be under the circumstances implied notice that there was something wrong about it; and if taken without inquiry, one should not be protected. For it is obvious that a *bona fide* owner would not throw away his property for a trifle, and that the purchaser acted in bad faith when he acquired it for comparatively nothing.

"To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith."[28]

Actual knowledge of a defect or infirmity in an instrument on the part of the indorsee, although purchased by him, for value and otherwise in good faith, will destroy the protection which the law affords to a holder in due course. The fact that full value was given for an instrument will not benefit the holder where it appears that he had actual knowledge of the facts which impeach the title thereof or prevent a recovery thereon by him. Knowledge of the agent acting within the scope of his authority is notice to the principal.

Now, there is one principle that is rather confusing in connection with a holder for value without notice, and yet it works out justice, and that is this principle: That if A receives an instrument from B and B was a *bona fide* holder for value without notice, even though A has notice when he receives it, if he is a holder for value, he may recover upon the instrument. That

Rep. 477; Joy v. Diefendorf, 130 N. Y. 6, 28 N. E. 602, 40 N. Y. St. 491, 27 Am. St. Rep. 484; Kitchen v. Loudenbach, 48 Ohio St. 177, 26 N. E. 979, 29 Am. St. Rep. 540.

[27] Smith v. Jansen, 12 Nebr. 125, 10 N. W. 537, 41 Am. Rep. 761; Jordan v. Grover, 99 Cal. 194, 33 Pac. 889; Knowlton v. Schultz, 6 N. D. 417, 71 N. W. 550.

[28] Neg. Inst. Law, § 95 (56),

is, if B secures the instrument, say for $50, and there are certain equities against that instrument, as for example, the note has been procured by fraud; B does not have notice of that fraud when he gets that instrument, B having that instrument and being lawfully entitled to it can pass that on to anybody he desires, and if A has notice of the fraud which B did not have notice of, A can recover against those parties who did not have notice. What good would the instrument do B calling for $50 in his hands? His hands would be tied and he could not dispose of it until he disposed of it to somebody who did not have notice. The principle of the law merchant is that it can pass from hand to hand the same as money does. The law merchant says, "Yes, B can dispose of that instrument to anybody; it does not matter if that person has notice of the fraud; that person who had notice can recover upon the instrument. A *bona fide* holder for value without notice can dispose of the paper to a *bona fide* holder for value who has notice."[29]

"Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course."[30]

The same is true as to paper which is overdue. An instrument has been received and it is one month overdue. A looks at the instrument and says, "Why, that was due the first of February and this is the first of March; why does the maker of that promissory note refuse to pay it? Why do those indorsers refuse to pay it? Do not misunderstand, because the instrument is overdue, that does not make it void, for if an instrument is all right before it is due, it is all right afterwards. If A receives an instrument payable to himself at maturity, he has a right to transfer that instrument after it is due. If A has good title to it, he can transfer it to anybody at any time. But, if A receives an instrument before it is due and receives it with notice of equities against it, such as fraud, etc., and he has notice of that before maturity, and then after the note becomes due and is not paid X comes along and A offers it to him, and he says, "That instrument is for $500, is it all right?" and A says, "Yes" —then X gives $500 for it, he is a *bona fide* holder for value but gets it after maturity. X gets no better title than A had. A had

where all cases directly or indirectly bearing upon or citing the Law are grouped.

[29] Butterfield v. Town of Ontario, 82 Fed. 891; Armstrong v. Am. Ex. Nat. Bank, 133 U. S. 433, 33 L. Ed. 747; Fowler v. Strickland, 107 Mass. 552; Bodley v. Emporia Nat. Bank, 38 Kan. 59, 16 Pac. 88.

[30] Neg. Inst. Law, § 92 (53), where all cases directly or indirectly bearing upon or citing the Law are grouped.

notice and X receiving it after maturity gets it also with notice, because A had notice and A cannot transfer any better title than he had.[31]

After maturity negotiable paper still passes from hand to hand *ad infinitum* until paid. Moreover, the indorser, after maturity, writes in the same form, and is bound only upon the same condition of demand upon the drawer and notice of non-payment, as any other indorser. The paper retains its commercial attributes, and circulates as such in the community; but there is this vital distinction between the rights of a transferee who received the paper before and of one who received it after maturity. The transferee of negotiable paper to whom it is transferred after maturity, acquires nothing but the actual right and title of the transferrer.[32]. The transferee takes overdue paper subject to all the equities with which it was encumbered in the hands of the party from whom he received it.[33] Thus if he took it from a thief, or finder, or from a bankrupt incapacitated by law to make the transfer, he can not recover on it, inasmuch as the thief, finder, or bankrupt could not.

Bills payable in installments are considered overdue *in toto*, when any installment is past due, but not from the fact that interest is past due.[34]

The position of a holder who takes a bill when overdue is this: He is a holder with notice. He may or may not be a holder for value and his rights will be regulated accordingly. He is a holder with notice for this reason; he takes a bill which, on the face of it, ought to have been paid. He is therefore bound to make two inquiries. 1. Has what ought to have been done really been done, *i. e.*, has the bill in fact been discharged? 2. If not, why not? Is there any equity attaching thereto? *i. e.*, was the title of the person who held it at maturity defective? If his title to the instrument was complete, it is immaterial that for some collateral reason, *e. g.*, set-off, he could not have enforced the bill against some one or more of the parties liable thereon.

[31] Greenwell v. Haylan, 78 Ky. 332, 29 Am. Rep 234; Ayer v. Hutchins, 4 Mass. 370, 3 Am. Dec. 232; Comstock v. Draper, 1 Mich. 481, 53 Am. Dec. 78; Lancaster Bank v. Woodard, 18 Pa. St. 357, 57 Am. Dec. 618. As to rights of holder of instruments transferred after maturity see notes 18 U. S. L. Ed. 931 and 46 L. R. A. 753.

The purchase of paper overdue merely makes it subject to the equities that may exist against it and does not permit an attack on the purchaser's title. Sanderson v. Crane, 14 N. J. L. 506.

[32] Fowler v. Brenbley, 14 Pet. 318. See note 46 L. R. A. 573.

[33] Speck v. Car Co., 121 Ill. 57, 12 N. E. 213; Church v. Clapp, 47 Mich. 257, 10 N. W. 362; Morgan v. U. S., 113 U. S. 500.

[34] Vinton v. King, 4 Allen 562; Field v. Tibbetts, 57 Me. 358, 99

The rule that a party taking an overdue bill or note takes it subject to the equities to which the transferrer is subject does not extend so far as to admit set-offs which might be available against the transferrer.[35] A set-off is not an equity, and the general rule stated is qualified and restricted to those equities arising out of the bill or note transaction itself, and the transferee is not subject to a set-off which would be good against the transferrer, arising out of collateral matters.

Am. Dec. 779; Nat. Bank of Battle Creek v. Dean, 86 Ia. 656, 53 N. W. 338.

30; Edney v. Willis, 23 Neb. 56, 36 N. W. 300; Young v. Shriner, 80 Pa. St. 463.

[35] Robinson v. Lyman, 10 Conn.

CHAPTER XIV.

REAL OR ABSOLUTE DEFENSES.

§ 130. Defenses—In general.
131. Real defenses—In general.
132. Incapacity to contract—Infancy.
133. Incapacity to contract—Coverture.
134. Incapacity to contract—Where corporation prohibited.
135. Incapacity to contract—Insanity.
§ 136. Incapacity to contract—Drunkenness.
137. Illegality of contract—Gaming, usurious and Sunday notes.
138. Forgery.
139. Duress when amounting to forgery.
140. Statute of limitations.
141. Failure to stamp.

§ 130. Defenses—In general. The defenses that may be interposed to an action upon a negotiable instrument may be grouped or arranged into two classes: (1) real or absolute defenses, and (2) personal defenses.

Real or absolute defenses are those that attach to the instrument itself, and are good against all persons, thus they are good against a *bona fide* holder for value. Real defenses, like real actions, are founded upon a right, good against the world. They are called real because they attach to the *res, i. e.*, the instrument itself, regardless of the merits or demerits of the plaintiff. So a purchaser for value without notice is powerless against a real defense.[1]

Personal defenses are those that grow out of the agreement or conduct of a particular person in regard to the instrument, which renders it inequitable for him, though holding the legal title, to enforce it against the defendant, but which are not available against *bona fide* purchasers for value, without notice. They are called personal defenses because they are available only against that person or a subsequent holder who stands in privity with him.[2]

The purpose of our consideration of these defenses on negotiable paper is to determine whether or not when an instrument gets into the hands of a *bona fide* holder for value without notice, there is any right which may be set up against him. We might say, as between the immediate parties, all defenses are real de-

[1] Ames Cases on Bills and Notes, 811. As to defenses in general, see note 46 L. R. A. 760.

[2] Ames Cases on Bills and Notes, 812.

fenses, because as between the immediate parties any defense can be set up just as in an ordinary contract.[3] As between you and A if the instrument has passed from you to A, A has the right to set up any defense he could on any ordinary contract. But it becomes important to know whether they run when it gets into the hands of some third party.

Now, there is another matter which is confusing in these defenses. We see that a real defense is a defense which attaches to the thing itself. Now, we must not confuse the idea that that instrument in the hands of everybody cannot be recovered against, for the real defense, in many instances, applies only to the person who has made the instrument. As a matter of fact, we may state it as a general rule, that a real defense is a defense which the person against whom you are endeavoring to recover may set up, and that person is usually the person primarily liable upon the instrument.

The *real* defenses are so-called here because they attach to the thing irrespective of the parties to it. The right sought to be enforced has never existed or ceased to exist; it is a real or absolute defense. It is a defense against everybody—against the party who receives it immediately from me, against A, B, C, or D, holders for value—against everybody. Now, those defenses which are absolute are five:

1. Want of capacity to make a binding contract.
2. Downright illegality of contract.
3. Forgery of indorsement.
4. The statute of limitations.
5. Duress when amounting to a forgery.

The personal defenses or those free from which the purchaser for value without notice acquires title are:

1. Alteration.
2. Simple fraud.
3. Duress.
4. Want or failure of consideration.
5. Illegality, unless the contract is declared void by the statute.
6. Payment or renunciation, or release before maturity.

§ 131. Real defenses—In general. As heretofore set out there are five divisions of real or absolute defenses.

[3] Kulenkamp v. Groff, 71 Mich. 675, 40 N. W. 57; Clark v. Pease, 41 N. H. 414; Voltier v. Zane, 6 Gratt. (Va.) 246; Wright v. Irwin, 33 Mich. 32; Mills v. Barber, 1 Mees. & W. 425.

The first is "The incapacity of the defendant to make the contract." (1) As infancy,[4] which may be a real defense at the option of the infant, and in some jurisdictions it is a real defense even in case of necessaries. (2) As coverture[5]—for example in some jurisdictions today married women are not bound by becoming surety. (3) So *ultra vires*[6] is a real defense; this, however, is an unusual case. It is a real defense to the corporation only. (4) Insanity[7] is a real defense when the party has been adjudged insane. It is a real defense to the insane person only. (5) And last is drunkenness.[8] It is a real defense to the drunkard only.

The second division is downright illegality of contract as "By statute."[9] (1) Where the statute declares the contract void, as a gaming contract. This is a real defense to the maker of the instrument, or to one who has made the instrument to pay a gambling debt. (2) Under the statute as when the statute connects a penalty, as notes made on Sunday. It would be a real defense as against anybody; against a *bona fide* holder for value, since he would not be a *bona fide* holder for value, because he would have notice that it was made on Sunday by the date upon it. (3) Under the statute is "usury." Usury is a real defense in some jurisdictions as to the excess over the legal rate and in others as to all the interest.

The third division is "Forgery."[10]

The fourth division is the "Statute of Limitations," which is a real defense at the option of the party who is entitled to set up that statute.

The fifth and last is "Duress,"[11] which is a real defense where it amounts to a forgery.

These will now be considered in their order.

§ 132. Incapacity to contract—Infancy. Suppose a note was made by a minor and you endeavor to recover against him and he sets up the defense that he is a minor, that he did not have the capacity to make that contract, and is therefore not liable. It is a defense which the minor can set up against all the world.[12] It is a defense which no one can set up for him but he must set

[4] *Post*, § 132.
[5] *Post*, § 133.
[6] *Post*, § 134.
[7] *Post*, § 135.
[8] *Post*, § 136.
[9] *Post*, § 137.
[10] *Post*, § 138.
[11] *Post*, § 139.
[12] Des Moines Ins. Co. v. McIntire, 89 Ia. 50, 68 N. W. 565; Howard v. Simpkins, 70 Ga. 322; Fitts v. Hall, 9 N. H. 441; Conroe v. Birdsall, 1 Johns. Cas. (N. Y.) 127, 1 Am. Dec. 105.

it up for himself.[13] Now, if that instrument passes through the hands of A, B and C, the succeeding parties can recover from the preceding parties on the instrument, because of these implied warranties which we have considered. If A makes a note payable to B, a minor, A would be estopped from setting up that B could not indorse.[14] And so, the instrument is not void as to everybody, but the minor has a right to set up that the instrument is void as to himself, but the other parties do not have that right.[15] In other words, if the minor indorses an instrument it does not bind him on the indorsement, but at the same time he transfers certain rights; he is not incapacitated to contract and transfer those rights.[16]

As to a note made by a minor for necessaries different jurisdictions have different rules. The law in some jurisdictions is that such a note made by a minor is voidable.[17] Of course, if he does not set up the fact that he is a minor he can go ahead and pay it, and the person who receives the money would be entitled to receive it. It is voidable then and not absolutely void. In some other jurisdictions they hold that a note made for necessaries by a minor is valid and he may be proceeded against the same as an adult.[18]

§ 133. Incapacity to contract—Coverture. A second real defense growing out of the incapacity to contract, particularly at common law, was coverture.[19] A married woman could not make that form of contract known as a negotiable instrument.[20] There is a diversity of the law as to married women's ability to contract today, but a married woman generally has the same capacity, just as if she were a single woman.[21] In some jurisdictions the

[13] Nightingale v. Withington, 15 Mass. 272, 8 Am. Dec. 101; Hertness v. Thompson, 5 Johns. (N. Y.) 160.

[14] Frazier v. Massey, 14 Ind. 382; Nightingale v. Withington, 15 Mass. 271, 8 Am. Dec. 101.

[15] Hastings v. Dollarhide, 24 Cal. 195; Hardy v. Waters, 38 Me. 450.

[16] Grey v. Cooper, 3 Doug. 54; Taylor v. Croker, 4 Esp. 187; Baker v. Kennett, 54 Mo. 82.

[17] Ayers v. Burns, 87 Ind. 245, 44 Am. Rep. 759; Fenton v. White, 4 N. J. L. 115; Swasey v. Vanderheyden, 10 Johns. (N. Y.) 33; Price v. Sanders, 60 Ind. 310.

[18] Duboise v. Wheddon, 4 McCord (S. C.) 221; Earle v. Reed, 51 Mass. (10 Metc.) 387; Bradley v. Pratt, 23 Vt. 378; Conn v. Coburn, 7 N. H. 368, 26 Am. Dec. 746.

[19] Dollner, Potter & Co. v. Snow, 16 Fla. 86; Cummins v. Leedy, 114 Mo. 454, 21 S. W. 804; Simpson v. Soan, 5 Cal. 457.

[20] Fernando v. Beshoar, 9 Colo. 291, 12 Pac. 196; Lackey v. Boruff, 152 Ind. 371, 53 N. E. 412; Radican v. Radican, 22 R. I. 405, 48 Atl. 143.

[21] Goar v. Moulton, 67 Cal. 536, 8 Pac. 63; Rodenmeyer v. Rodman, 5 Ia. 426; Barrow v. Mittenberger, 21 La. Ann. 396; McVey v.

contract of a married woman as to surety is void and consequently on such a contract she would have a real defense.[22]

§ 134. Incapacity to contract—Where corporation prohibited. If a corporation has power to make a note for any purpose, it cannot, against a *bona fide* holder, set up as a defense that it had no power to make a note for a particular purpose.[23] Where a corporation is prohibited by its charter or by statute from issuing negotiable paper under any circumstances, such paper is absolutely void, even in the hands of a *bona fide* holder for value,[24] since what is absolutely void *ab initio* cannot acquire validity by being transferred to a third person any more than a forged instrument could acquire validity in that way. When a corporation has received the benefit of the proceeds of a bill or note it cannot set up the defense of *ultra vires* in an action on such bill or note.

It is not usual, however, for a corporation to be prohibited by its charter or by statute from issuing negotiable paper under any circumstances, as above stated.

§ 135. Incapacity to contract—Insanity. If the party sued is adjudged insane the obligation is a non-enforceable one.[25] This defense is available not only as between immediate parties, but also as against a *bona fide* holder for value.[26]

§ 136. Incapacity to contract—Drunkenness. If a person become so drunk as to be deprived of understanding and reason, there is no doubt that while in such a condition, he has no capacity to enter into a contract and if he should sign a negotiable

Contrell, 70 N. Y. 295, 26 Am. Rep. 605; Williamson v. Cline, 40 W. Va. 194, 20 S. E. 917.

Note: In order to determine the status of married women reference must be made to the statutes of the several states.

[22] Wiltbank v. Tobler, 181 Pa. St. 103, 37 Atl. 188; Stores & Co. v. Wingate, 67 N. H. 190, 29 Atl. 413; Vliet v. Eastburn, 63 N. J. L. 450, 43 Atl. 741; Voreis v. Mussbaum, 131 Ind. 267, 31 N. E. 70, 16 L. R. A. 45.

The common law rule is not changed except in the particular cases provided by statute. Wilcox v. Arnold, 116 N. C. 708, 21 S. E. 434; Rowe v. Kohle, 4 Cal. 285.

[23] Jacobs v. Southern Banking Co., 97 Ga. 573, 25 S. E. 171; Monument Nat. Bank v. Globe Works, 101 Mass. 57, 36 Am. Rep. 322; Auerbach v. Le Sueur Mill Co., 28 Minn. 291, 9 N. W. 799, 41 Am. Rep. 285; Blunt v. Walker, 11 Wis. 334, 78 Am. Dec. 709.

[24] Scott v. Bankers' Union, 73 Kan. 575, 85 Pac. 604; Chillicothe Bank v. Dodge, 8 Barb. (N. Y.) 233; Root v. Godard, 3 McLean 102, Fed Cas. No. 12,037.

[25] Van Patton v. Beals, 46 Ia. 62; Wirebach v. Easton Bank, 97 Pa. St. 543, 39 Am. Rep. 82.

See Carrier v. Sears, 86 Mass. (4 Allen) 336, 81 Am. Dec. 707.

[26] Rice v. Peet, 15 Johns. (N. Y.) 503; Taylor v. Dudley, 5 Dana (Ky.) 308; Moore v. Hershey, 90 Pa. St. 196; Hosler v. Beard, 54 Ohio St. 398, 43 N. E. 1040, 56 Am. St. Rep. 1040, 35 L. R. A. 161.

instrument, either as maker, drawer, indorser or acceptor, it would certainly be void as to all parties having notice of the condition in which he signed it.[27] If the drunkenness were so complete as to suspend all rational thought, the better opinion is that any instrument signed by the party would be utterly void even in the hands of a *bona fide* holder without notice, for, although it may have been the party's own fault that such an aberration of mind was produced, when produced it suspends for the time being his capacity to consent, which is the first essential of a contract.[28]

§ 137. Illegality of contract—Gaming, usurious and Sunday notes. A second division of real or absolute defenses is illegality of contract, whereby by force of statute certain contracts are declared to be absolutely void, *e. g.*, gaming notes, usurious notes and Sunday notes.

The Negotiable Instruments Law in some states provides:

"If the consideration of a promissory note or other negotiable instrument consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time, in the locality, or of the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, the words, 'given for a speculative consideration,' or other words clearly showing the nature of the consideration, must be prominently and legibly written or printed on the face of such note or instrument above the signature thereof; and such note or instrument, in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder."[28a]

The maker, indorser, acceptor, or any party to a gaming in-

[27] Burroughs v. Richman, 13 N. J. L. 233, 23 Am. Dec. 717; Stigler v. Anderson, — Miss. —, 12 So. 831; Gore v. Gibson, 13 M. & W. 623.

[28] Caulkins v. Fry, 35 Conn. 170. As against a *bona fide* holder, however, it has been determined that intoxication is no defense. The reason underlying this rule is that, when a man has voluntarily put himself in such a condition that a loss must fall on one of two innocent persons it should fall on him who occasioned it. If drunkenness were a defense it would clog and embarrass the circulation of commercial paper. Miller v. Finley, 26 Mich. 248, 12 Am. Rep. 306; McSpencer v. Neeley, 91 Pa. St. 17; Smith v. Williamson, 8 Utah 219, 30 Pac. 753.

[28a] Neg. Inst. Law (New York), § 331, where all cases directly or indirectly bearing upon or citing the Law are grouped.

strument has a real defense in his favor in those jurisdictions having a statute to the effect that all notes, bills, checks or instruments made hereafter, when the whole or any part of the consideration thereof shall be for money or other valuable thing won on the result of any wager, or for repaying any money lent at the time of such wager for the purpose of being wagered, shall be void.[29]

Usury in some jurisdictions is a real defense by statute.[30] Usury is defined as an unlawful contract upon the loan of money, to receive the same again with exorbitant increase. In other words it is the reserving and taking, or contracting to reserve and take, either directly or by indirection, a greater sum for the use of money than the lawful interest.[31]

In some jurisdictions a purchaser for value without notice cannot recover the sum called for by the instrument from persons who were parties to the instrument at its inception, when the instrument was negotiated in its inception at a rate greater than the legal rate of interest.

Interest in advance is not usury,[32] nor does a sale of notes at a discount, in good faith, render the contract usurious.[33] In addition to the legal rate of interest lenders of money may take a reasonable compensation for trouble and expense.[34] And as a general rule compound interest is not allowed,[35] but after simple interest is due, it may by contract be allowed in consideration of

[29] Snoddy v. American Nat. Bk., 88 Tenn. 573, 13 S. W. 127, 17 Am. St. Rep. 918, 7 L. R. A. 705; Ayer v. Younker, 10 Colo. App. 27, 50 Pac. 218; Sondheim v. Gilbert, 117 Ind. 71, 18 N. E. 687, 10 Am. St. Rep. 23, 5 L. R. A. 432; Chapin v. Duke, 57 Ill. 295, 11 Am. Rep. 15. See note 18 U. S. L. Ed. 423.

[30] Pearson v. Bailey, 23 Ala. 537; Bridge v. Hubbard, 15 Mass. 96, 8 Am. Dec. 86; Solomons v. Jones, 3 Brev. (S. C.) 54, 5 Am. Dec. 538; Hamilton v. Fowler, 99 Fed. 18.

In the absence of a statutory provision the better doctrine is that usury is not a defense which is available against a bona fide holder although there is much conflict on this point. Cheney v. Janssen, 20 Neb. 128, 29 N. W. 289; Robinson v. Smith, 62 Minn. 62, 64 N. W. 90; Tilden v. Blair, 21 Wall. (U. S.) 241.

[31] Brundage v. Burke, 11 Wash. 679, 40 Pac. 343; Wilkie v. Roosevelt, 3 Johns. (N. Y.) 206, 2 Am. Dec. 149; Newton v. Wilson, 31 Ark. 484. As to effect of usury in renewal note on original, see note 18 U. S. L. Ed. 305.

[32] Bank of Newport v. Cook, 60 Ark. 288, 30 S. W. 35, 29 L. R. A. 761; Scott v. Safford, 37 Ga. 384; English v. Smock, 34 Ind. 115.

But see Lemer v. Cox, 65 Ga. 265; Hiller v. Ellis, 72 Miss. 701, 18 So. Rep. 95.

[33] Beals v. Benjamin, 33 N. Y. 61; Borrows v. Cook, 17 Ia. 436; Geurren v. Cullen, 20 Gratt. 439.

[34] Beadle v. Munson, 30 Conn. 175; McGill v. Ware, 5 Ill. 21; Brummel v. Enders, 18 Gratt. 873.

[35] *Ex parte* Bevan, 9 Ves. 223; Perkins v. Coleman, 51 Miss. 298.

giving time for payment.[36] In some jurisdictions notes made on Sunday are void by statute. In such case it may be set up as a real defense.[37]

And whenever a statute declares a consideration void the holder may have a real defense set up against him.

§ 138. Forgery. By forgery is meant the counterfeit making or fraudulent alteration of any writing, and may consist in the signing of another's name, or the alteration of an instrument in the name, amount, description of the person and the like, with intent thereby to defraud. The intent to defraud distinguishes forgery from innocent alterations and spoliation.[38] A forgery or fraudulent alteration will avoid the instrument and also extinguish the debt which represents the consideration of the instrument.

The Negotiable Instruments Law provides:[39]

"Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority."

An acceptor or an indorser may be precluded from setting up the forgery or want of authority as to the drawer or maker.

It should be remembered that the drawee by accepting a bill, warrants the genuineness of the drawer's signature, and the indorsers likewise guarantee the genuineness of all parties to the bill at the time of the indorsement.[40]

Since an acceptor of a bill warrants the genuineness of the signature of the drawer he can not therefore resist payment of the bill as against a *bona fide* holder if the drawer's name be forged.[41] An indorser of a negotiable instrument admits that, at the time of his indorsement the instrument was valid and sub-

[36] Van Benschooten v. Lawson, 6 Johns. Ch. Rep. 313; Connecticut v. Jackson, 6 Johns. Ch. Rep. 13.

[37] Reeves v. Butcher, 3 N. J. L. 224; Wadsworth v. Dunnam, 117 Ala. 661, 23 So. 699.

[38] Commonwealth v. Wilson, 89 Ky. 157, 12 S. W. 264, 25 Am. St. Rep. 528; Franklin Fire Ins. Co. v. Bradford, 201 Pa. 32, 50 Atl. 286, 55 L. R. A. 408, 88 Am. St. Rep. 770.

[39] Neg. Inst. Law, § 42 (23), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to payment of forged bill by drawee or acceptor, see note 6 U. S. L. Ed. 335. As to liability of person whose signature is forged, see note 36 L. R. A. 539.

[40] Olivier v. Audry, 7 La. 496; Rambo v. Metz, 5 Strob. (S. C.) 108.

[41] Hoffman & Co. v. Bank of Milwaukee, 12 Wall. 181, 20 L. Ed. 366; Price v. Neal, 3 Bun. 1354;

sisting, and he is, therefore, bound by his indorsement to subsequent parties.[42] And it has been held that a bank is entitled to recover against the second indorser of a note, although the indorsement of the name of the payee is a forgery, and although the note was offered for discount by the maker and not by the second indorser.[43] The warranty of the acceptor only extends to the genuineness of the signature, and not to the matters contained in the bill itself. An indorser, by his indorsement, contracts with the subsequent *bona fide* holder of the instrument, that the instrument itself, and all the signatures prior to his indorsement, are genuine; and the fact that the name of the maker was forged will not affect his liability.[44]

§ 139. Duress when amounting to forgery. When duress amounts to a forgery it is held in some jurisdictions to be a real defense. Thus when the signature of a person is obtained to an instrument under such circumstances as makes the instrument a forgery, the person signing the same will not be liable thereon to any one.[45]

And so duress might be a real defense in every jurisdiction, as where A takes B's hand and forces him to sign his name. In such case the duress amounts to a forgery and is a real defense.

§ 140. Statute of limitations. The statute of limitations is a real defense. Holders of negotiable instruments do not necessarily have notice whether the period of limitation has run out or not. The instrument may not be dated, or, what is usual, an indorsement may not be dated; but the real date of the act, or rather of the delivery following it, may be shown, when there is nothing, such as subsequent payments of interest or installments, to prevent the running of the statute from that time.[46]

§ 141. Failure to stamp. Failure to put a revenue stamp on an instrument was in some jurisdictions a real defense. In some it was not a real defense. This is only important when such a law is in force.[47]

Redington v. Woods, 45 Cal. 406, 13 Am. Rep. 19.

[42] Cochran v. Atchinson, 27 Kan. 728; Beattie v. Nat. Bank, 174 Ill. 571, 66 Am. St. Rep. 318, 43 L. R. A. 654.

[43] State Bank v. Feaning, 16 Pick. 533, 28 Am. Dec. 265.

[44] Olivier v. Audry, 7 La. 496. As to effect of forgery of part of signatures as defense against *bona fide* holder by makers whose signatures were genuine, see note 13 L. R. A. (N. S.) 426.

[45] Mitchell v. Tomlinson, 91 Ind. 167; Webb v. Corbin, 78 Ind. 403; Cline v. Guthrie, 42 Ind. 227.

See also Hatch v. Barrett, 34 Kan. 223; Loomis v. Rush, 56 N. Y. 462.

[46] As to their application, see statutes of the various states.

[47] Robinson v. Fair, 31 Ia. 9; Anderson v. Starkweather, 24 Ia. 409; Green v. Davies, 4 B. & C. 233; Ebert v. Gitt, 95 Md. 186, 52 Atl. 900.

CHAPTER XV.

PERSONAL DEFENSES OR EQUITIES.

§ 142. In general.
143. Fraud.
144. Alteration.
145. Duress.
§ 146. Want or defect of consideration.
147. Illegality of consideration.
148. Payment.

§ 142. Personal defenses or equities—In general. The real defenses are such, that the party who has a right to set them up, can set them up against anybody. Every other person does not necessarily have a real defense because the party originally liable does. The real defense is one which the person alone who has it may set up. So, when we say that a real defense is an absolute defense so far as the person who is entitled to the defense is concerned, we do not necessarily mean that that extends to the other parties. A personal defense is of an equitable nature. It is a defense which depends upon circumstances, it is a defense which a person has a right to set up under certain circumstances, and those circumstances are dependent upon whether or not he had notice and whether or not he was a purchaser for value. In the real defense, it is not a matter as to whether the person is a purchaser for value and had notice, and the like, the defense may be set up regardless of these facts; but a personal defense cannot be set up that way since as to such a defense a person must show that he has not had notice and that he is a purchaser for value.

As to equities or personal defenses it is important to know who are to be regarded as the immediate parties, or parties between whom there is a privity, to a negotiable instrument, and who are remote. Among the former may be classed: (1) The drawer and acceptor of a bill;[1] or (2) the drawer and payee of a bill as a general rule;[2] (3) the maker and payee of a note;[3] and (4) the indorser and immediate indorsee[4] of a bill or note.

That the bill or note has been lost or stolen[5] or was executed

[1] Thomas v. Thomas, 7 Wis. 476.
[2] McCulloch v. Hoffman, 10 Hun (N. Y.) 133.
[3] Kennedy v. Goodman, 14 Neb. 585, 16 N. W. 834; Jeffries v. Austin, 1 Strange 674.
[4] Klein v. Keyes, 17 Mo. 326; Holliday v. Atkinson, 5 Barn. & C. 501.
[5] Mills v. Berger, 1 Mees. & W. 425.

under duress,[6] or under fraudulent misrepresentations, or for fraudulent consideration,[7] or for illegal consideration,[8] or has been fraudulently obtained from an intermediate holder,[9] or been in any way the subject of fraud or felony, or has been misappropriated and diverted, or that it was given as collateral security, or for a loss for which the party was not liable, or that otherwise it was without valuable consideration, is a good defense as between the parties privy to it. And in some cases it is a good defense that it was given by mistake for too great a sum, or when no sum was due, the evidence showing fraud or a total or partial want of consideration. As between the immediate parties on a bill or note no question arises whether the defense is real or personal. Any defense is valid as between immediate parties if it would be valid on an ordinary contract. But when the parties are not immediate, then the question arises as to whether it is a real or a personal defense. Personal defenses being in the nature of equities, two principles of equity apply to them. (1) One is, he who comes into equity must come with clean hands; he must not be a party to any fraud, to any illegality. If he has notice[10] of any of these, he does not have clean hands. (2) The other is, of two innocent parties, he whose act or omission has caused the loss, must stand it. Equity says, as between two innocent parties, the one should suffer whose act or omission has caused the loss.[11] If a person has no notice and he is the party who has made this loss possible there can be a recovery against him.

Where a paper is in the hands of a custodian: The rule is the person who enables the fraud to be perpetrated must stand responsible[12] where the instrument is gotten possession of in such a manner as to amount to a forgery, it should be a real defense and no recovery should be permitted against it. Here, however, we find a conflict of authority. The better opinion is that if you can show that it amounted to a forgery or was obtained by duress, there can be no recovery against you if you are the person liable on the instrument.

[6] Clark v. Pease, 41 N. H. 414.

[7] Wilson v. Ellsworth, 25 Neb. 246, 41 N. W. 177; Macomb v. Wilkinson, 83 Mich. 486, 47 N. W. 336.

[8] Cummins v. Boyd, 83 Pa. St. 372; Bierce v. Stocking, 11 Gray (Mass.) 174.

[9] Rodgers v. Morton, 12 Wend. 484; Vither v. Zane, 6 Gratt. (Va.) 246.

[10] Mass. Nat. Bank v. Snow, 187 Mass. 159; Cheever v. The Pittsburg etc. R. R. Co., 150 N. Y. 59, 55 Am. St. Rep. 646, 34 L. R. A. 69.

[11] Ledwich v. McKim, 53 N. Y. 307.

[12] Putnam v. Sullivan, 4 Mass. 45, 3 Am. Dec. 206; McCormick v. Holmes, 41 Kan. 265, 21 Pac. 108.

The Negotiable Instruments Law provides:

"The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud."[13]

§ 143. **Fraud.** Where the consideration for a bill is clearly fraudulent it is a good defense against an immediate party[14] or a remote party unless he is an innocent holder for value,[15] and while the instrument is yet in the hands of a party with notice a court of law will compel its surrender, or restrain its negotiation until the question of fraud is settled.[16]

A bill is affected with fraud when the issue or any subsequent negotiation of it is obtained by fraud, coercion, or when it is negotiated in breach of faith, or in fraud of third parties.

No holder of a bill subsequent to its being affected with fraud can enforce payment from any party thereto, or retain the bill against the rightful owner unless he received it from a *bona fide* holder for value without notice. The question of fraud is largely one of negligence. Did a person who has signed the instrument and let it get into the hands of other parties, or into circulation, act with negligence? If he did not, then fraud is a real defense, but if he did so act, it is a personal defense.[17] Where a person, in case of fraud, signs an instrument believing he is signing a different instrument, if he was negligent he cannot set up the personal defense. Then, in case of delivery through fraud, where an instrument has been delivered to an agent or an agent has fraudulently delivered it to someone else, fraud is not a personal defense, because the agent was entrusted with it.[18] As to a custodian the general law applies the same.[19] The maker

[13] Neg. Inst. Law. § 94 (55), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[14] Carthers v. Levy, 111 Ga. 740, 36 S. E. 958; Alabama Nat. Bank v. Halsey, 109 Ala. 196, 19 So. 522; Still v. Snow, 66 Vt. 277, 29 Atl. 250.

[15] Russ Lumber Co. v. Muscupiable Land & W. Co., 120 Cal. 521, 52 Pac. 993; Nichols v. Baker, 75 Me. 334; Hawley v. Hirsch, 2 Woodw. Dec. (Pa.) 158. *Bona fide* holder takes instrument unaffected by fraud in its origin, see note 11 Am. St. Rep. 309.

[16] Hullhorst v. Schamer, 15 Neb. 57, 17 N. W. 259; Hodson v. Eugene Glass Co., 1o6 Ill. 397, 40 N. E. 971; Sackett v. Hillhouse, 5 Day 551; Wilcox v. Ryols, 110 Ga. 287, 34 S. E. 575.

[17] Gardner v. Wiley (Ore.), 79 Pac. 341; Howry v. Eppinger, 34 Mich. 29.

[18] Hutchinson v. Brown, 19 Dist. Col. 136; Jordan v. Jordan, 10 Lea (Tenn.) 124, 43 Am. Rep. 294.

[19] Walker v. Ebert, 29 Wis. 194;

of the instrument would not be entitled to set up the fraud; and, where the instrument has been stolen or wrongfully taken, then the question becomes largely a question of negligence. If the party has been negligent, then he has no right to set up fraud as a personal defense. If he has not been negligent, then other circumstances not being considered, he could not be recovered against.[19e]

§ 144. **Alteration.** The following is the provision in the Negotiable Instruments Law:

"*Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.*"[20]

A material alteration is defined to be any charge in the instrument which affects or changes the liability of the parties in any way.[21] The alteration avoids the paper regardless of whether it is favorable or unfavorable to the party making the alteration.[22] The following have been held to be material alterations: any change in the date of the instrument, but not in the date of the indorsement;[23] any alteration in the amount of principal or interest;[24] any change in the character of the payment, whether in the denomination or medium of payment;[25] any alteration in the personality, number and relations of the parties;[26] any change in the liability of the parties;[27] or any change in the place of payment.[28]

The addition of the name of a witness to an instrument re-

Baldwin v. Bricker, 86 Ind. 222; Bedell v. Herring, 77 Cal. 572.

[19e] As to title of *bona fide* holder to stolen paper, see note 103 Am. St. Rep. 983, 987.

[20] Neg. Inst. Law, § 205 (124), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[21] Foxworthy v. Colby, 64 Neb. 216, 89 N. W. 800, 62 L. R. A. 393; Organ v. Allison, 68 Tenn. (9 Baxt.) 459.

[22] Franklin Ins. Co. v. Courtney, 60 Ind. 134; Mersman v. Werges, 112 U. S. 139, 28 L. Ed. 641.

[23] Wood v. Steele, 6 Wall. 8; Griffith v. Cox, 1 Tenn. 210; Mersman v. Werges, 112 U. S. 139, 28 L. Ed. 641.

[24] Harsh v. Klepper, 28 Ohio St. 200; Draper v. Wood, 112 Mass. 315; Batchelder v. White, 80 Va. 103; Neff v. Horner, 63 Pa. 327, 3 Am. Rep. 555.

[25] Foxworthy v. Colby, 64 Neb. 216, 89 N. W. 800, 62 L. R. A. 393; Schwalen v. McIntyre, 17 Wis. 232.

[26] Lamb v. Paine, 46 Ia. 551; Sneed v. Sabinal Min. & Mill. Co., 71 Fed. 493, 18 C. C. A. 213.

[27] Blake v. Coleman, 22 Wis. 415.

[28] Codes & St. Or. 1901, § 4527; Rev. Codes, N. D., § 1053.

quired by law to be witnessed is a material alteration, but if the instrument need not be witnessed or if it already has on it the number of witnesses required by law, the alteration is immaterial. An innocent alteration, when material, is held by some authorities to avoid the instrument while not cancelling the debt, others holding that so long as the alteration has caused no injury a court of equity may restore it to its original condition so that suit may be brought on it.[29]

When the change in the bill or note is made by a stranger it is called a spoliation instead of an alteration. Such a change of an instrument has no effect upon it, if the original meaning can be ascertained. That is, if the alteration be made by a stranger to the instrument the rights of the parties are not affected.[30]

Immaterial alterations are those which do not change the legal effect of the instrument, as adding words implied by law, making marginal figures to correspond to the written statement in the body of the instrument, the adding of immaterial memoranda, and the like.[31] Thus the correcting of a mistake to conform to the intention of the parties is an immaterial alteration.[32]

In those jurisdictions which have not adopted the Negotiable Instruments Law the law is generally as follows: *Bona fide* holders are only protected against material alterations discharging the party liable, when some carelessness or negligence on the part of the person whose liability has been changed by the alteration, has contributed to the negotiation of the paper without suspicion of fraud, as where blank spaces have been left,[33] or it is written partly in pencil so as to be easily erased; so a memorandum which can be detached without affecting the paper will, when detached in fraud, not be allowed to avoid the paper in the hands of a *bona fide* holder.[34]

In those jurisdictions the effect of a material alteration by the holder of a bill is to discharge all parties from liability on the bill, unless they consented to such alteration.[35]

[29] Booth v. Powers, 56 N. Y. 31; Kountz v. Kennedy, 63 Pa. St. 187. *Contra*, Bigelow v. Stephens, 35 Vt. 525.

[30] Buckler v. Huff, 53 Ind. 474. Langenberger v. Kroeger, 48 Calif. 147. See note 18 U. S. L. Ed. 725.

[31] Smith v. Smith, 1 R. I. 398; Bacheldor v. Priest, 12 Pick. 399; Keene, Adm. v. Miller, 103 Ky. 628, 45 S. W. 1041. As to immaterial alterations, see note 12 U. S. L. Ed. 443.

[32] Bank v. Bank, 13 N. Y. 309; Shepard v. Whetstone, 51 Ia. 457, 1 N. W. 753, 33 Am. Rep. 143.

[33] Stratton v. Stone, 15 Colo. App. 237, 61 Pac. 481; Rainbolt v. Eddy, 34 Ia. 440, 11 Am. Rep. 152; Cannon v. Grigsby, 116 Ill. 151, 5 N. E. 362, 56 Am. Rep. 769; Isnard v. Tones, 10 La. Ann. 103; Zimmerman v. Rate, 75 Pa. St. 188; Harvey v. Smith, 55 Ill. 224.

[34] Noll v. Smith, 64 Ind. 511.

[35] Burrows v. Klunk, 70 Md.

§ 145. Duress. Duress, under most circumstances, is considered a personal defense.[36]

The abuse of any process, either civil or criminal, to compel a party, by imprisonment, to do any act against his will except to pay the debt for which he is arrested, is entirely illegal, and the act may be avoided, on the ground of duress.[37] Thus where an arrest was without any warrant or lawful authority and a note was signed under such pressure.[38] Duress is a perfect defense to an action between the original parties and parties having notice of it.[39]

§ 146. Want or defect of consideration. The largest number of defenses concern consideration. Anything which is a good consideration in a contract is a good one in a bill or note, or a negotiable instrument. If a person has bought something and agreed to give something in return, the court will not look into whether he has gotten value, the courts do not look into that, but the court will look into some other matters. If there has been no consideration whatever, the court will look into that as between the immediate parties—that is a personal defense.[40] As between the parties, one who has notice of want or failure of consideration, that is a defense the maker can set up against him. For instance, A makes a promissory note, and gives it to B as a gift; there is no consideration; A only thereby promises to give B $50 in the future. As between the parties there can be no recovery; but if A gives B a note of a third person, it is held there is sufficient consideration and B can recover from that person, but he cannot recover against A in the first case on account of the want of consideration.

By failure of consideration, we mean something which apparently had a good consideration, but for some cause or other the consideration has failed.[41] A thinks he owns a certain piece of property, but there is a judgment against him and execution has not been taken and A conveys that property to B for B's

451, 17 Atl. 378, 14 Am. St. Rep. 371, 3 L. R. A. 576; Mills v. Wilson, 3 Ore. 308; Bank v. Lockwood, 13 W. Va. 392. As to authorized alterations, see note 12 U. S. L. Ed. 443. As to fraudulent alterations, see note 13 U. S. L. Ed. 266.

[36] Hogan v. Moore, 48 Ga. 156; Mumly v. Whitmore, 15 Neb. 647, 19 N. W. 694; Clark v. Pease, 41 N. H. 414.

[37] Thurman v. Burt, 53 Ill. 129; Shauk v. Phelps, 6 Ill. App. 612; Sheu v. Spooner, 9 N. H. 197, 32 Am. Dec. 348.

[38] Osborn v. Robbins, 36 N. Y. 365.

[39] Graham v. Marks, 98 Ga. 67, 25 S. E. 931.

[40] Farmers' Savings Bank v. Hausman, 114 Ia. 49, 86 N. W. 31; Chicago Title & Trust Co. v. Bary, 165 Mo. 197, 65 S. W. 303; Hogan v. Bigler, 5 Okla. 575, 49 Pac. 1011.

[41] Shirk v. Neible, 156 Ind. 66, 59 N. E. 281, 83 Am. St. Rep. 150;

note. In the meantime, the property is taken on execution—there has been a failure of consideration and that note could not be recovered upon.

Want of consideration is matter of defense as against any person not a holder in due course.[42]

Partial failure of consideration is a defense *pro tanto* against an immediate party when the failure is an ascertained and liquidated amount in money.[43] But it is not a defense against a remote party holder for value.[44] A few decisions hold that a partial failure of consideration will not constitute a good defense in any case whether definite or indefinite.[45]

Total failure, as against an immediate party is a good defense,[46] but not as against a remote party who is a *bona fide* holder for value without notice.[47] Thus where the consideration of the note was that the payee should act as executor for the maker, and the payee died first, the note could not be enforced against the maker. So where a bill is drawn by one party on another payable to his own order, and is accepted, if the consideration fails as between these two, an indorsee for value who knows that the consideration has failed cannot sue the acceptor.

§ 147. Illegality of consideration. Under the division "Illegality of Consideration" there are three classes of cases:

(1) Those prohibited by statute, unless the statute renders the contract absolutely void.
(2) Common law prohibitions.
(3) Those against public policy.

Where the consideration is illegal in whole or in part it is a defense against the entire note while in the hands of an immediate party or one who is not a *bona fide* holder for value with-

Ingersoll v. Martin, 58 Md. 67, 42 Am. Rep. 322.

[42] Angier v. Brewster, 69 Ga. 362; Hickson v. Earley, 62 S. C. 42, 39 S. E. 782; Clarion Second Nat. Bank v. Morgan, 165 Pa. St. 199, 30 Atl. 957, 44 Am. St. Rep. 652.

[43] Russ Lumber Co. v. Muscupiable L. & W. Co., 120 Cal. 521, 52 Pac. 995, 65 Am. St. Rep. 186; Cook v. Mix, 11 Conn. 432; Journal Printing Co. v. Maxwell, 1 Pennew. (Del.) 511, 43 Atl. 615; Wadsworth v. Smith, 10 Shep. (Me.) 500; Truesdale v. Watts, 12 Pa. St. 73.

[44] Edwards v. Porter, 42 Tenn. (2 Cold.) 42.

[45] Reddick v. Mackler, 23 Fla. 335, 2 So. 698; Hinton v. Scott, Dud. (Ga.) 245; Stocks v. Scott, 188 Ill. 266, 58 N. E. 990.

[46] Russ Lumber etc. Co. v. Muscupiable L. & W. Co., 120 Cal. 52; Ingersoll v. Martin, 58 Md. 67, 42 Am. Rep. 322.

[47] Morrison v. Farmers' & Merchants' Bank, 9 Okla. 697, 60 Pac. 275; Trustees v. Hill, 12 Ia. 462.

out notice. In general, the consideration for a bill is illegal when it is wholly or in part immoral, contrary to public policy, or forbidden under penalties by statute.[48]

A distinction is to be made between a consideration simply illegal and one which by statute expressly makes an instrument void. In the former case a *bona fide* transferee may recover, though not in the latter.[49]

Where an instrument is given for a consideration which the statute expressly makes void, the party who gave the paper may set it up as a defense against all the holders whether immediate or remote, but the holder can sue the indorser.[50] It is no longer customary by law to make notes expressly void by statute, and where such statutes do exist a clause frequently saves the rights of innocent holders. The holder of commercial paper is *prima facie* presumed to be an innocent holder for value, but where there is evidence affecting the bill or note with fraud or illegality, the burden of proof is shifted to the holder to show that he is an innocent holder for value.[51] In case the holder can show that he paid full value the defendant must then show that the holder had notice of the fraud or illegality. So it is held that where the holder has in good faith given part value he may recover to a like amount.

Commercial paper based upon considerations which contravene public policy are void.[52] Among such considerations is that for the purchase and sale of so-called "Bohemian Oats" at an exorbitant price.[53]

Where one gives a note to another and for the reason that the other has committed a crime or will commit a crime—such

[48] Bell v. Putnam, 123 Cal. 134, 55 Pac. 773; Baker v. Parker, 23 Ark. 390; Dickson v. Kittson, 75 Minn. 168, 77 N. W. 820, 74 Am. St. Rep. 447; Irwin v. Margaret, 26 Ind. App. 383, 59 N. E. 38.

[49] Robinson v. Coleman, 141 Mass. 231, 4 N. E. 619, 55 Am. Rep. 471; Ferris v. Tavel, 87 Tenn. 386, 11 S. W. 93, 3 L. R. A. 414; Woodson v. Barrett, 2 Hen & M. 80, 3 Am. Dec. 612; Snoddy v. Bank, 88 Tenn. 573, 13 S. W. 127, 7 L. R. A. 705.

[50] Snoddy v. Bank, 88 Tenn. 573, 13 S. W. 127, 7 L. R. A. 705; Morton v. Fletcher, 2 A. K. Marsh (Ky.) 137, 12 Am. Dec. 366; Cunningham v. Bank, 71 Ga. 400, 51 Am. Rep. 266.

[51] Farmers' & Citizens' Bank v. Noron, 45 N. Y. 762; Davis v. Bartlett, 12 Ohio St. 584, 80 Am. Dec. 375; Nickerson v. Ruger, 76 N. Y. 279.

[52] Yeats v. Williams, 5 Ark. 684; Ball v. Putnam, 123 Cal. 134, 55 Pac. 773; Stoutenberg v. Lyband, 13 Ohio St. 228; Meachem v. Dow, 32 Vt. 721.

[53] Schmueckle v. Waters, 125 Ind. 265, 25 N. E. 281; Payne v. Raubinck, 82 Ia. 587, 48 N. W. 995; Merrill v. Parker, 80 Ia. 542, 45 N. W. 1076.

note is a violation of the common law and there can be no recovery on it, that is, it is a personal defense which can be set up.[54]

§ 148. **Payment.** Payment in due course is the discharge of the instrument and is a good defense,[55] but payment by one secondarily liable is not a discharge of the instrument.[56]

If a person makes an instrument and it becomes due and payment is made, then it is discharged, but if he purchases the instrument and it is not intended as in payment, it is not discharged.

[54] Barker v. Parker, 23 Ark. 390; Baker v. Farris, 61 Mo. 389.

[55] Swope v. Ross, 40 Pa. St. 186; Ballard v. Greenbush, 24 Me. 336; Gardner v. Maynard, 7 Allen 456.

[56] Morgan v. Rentzel, 7 Cranch. 273; West Boston's Sav. Bank v. Thompson, 124 Mass. 506; Callon v. Lawrence, 3 Maule & S. 95.

CHAPTER XVI.

PRESENTMENT, NOTICE OF DISHONOR AND PROTEST.

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§ 149. Meaning of terms. By Presentment is meant the production of a bill of exchange to the drawee for his acceptance, or to the drawee or acceptor for payment; or the production of a promissory note to the party liable for payment of the same.[1]

By Protest is meant a formal statement in writing made by a notary under his seal of office, at the request of the holder of a bill or note, in which it is declared that the same was on a certain day presented for payment (or acceptance, as the case may be), and that such payment (or acceptance) was refused, and stating the reasons, if any, given for such refusal, whereupon the notary

[1] Windham Bank v. Norton 22 Conn. 213, 56 Am. Dec. 397; Fall River Union Bank v. Willard, 5 Metc. (Mass.) 216; Fiske v. Beckwith, 19 Vt. 315, 46 Am. Dec. 174.

protests against all parties to such instrument, and declares that they will be held responsible for all loss or damage arising from its dishonor.[2]

By Notice of Dishonor is meant a notification to the parties on an instrument whom it is desired to hold liable on such instrument. If such notice were given by a notary it would be called a protest. When a negotiable bill or note is dishonored by non-acceptance on presentment for acceptance, or by non-payment at its maturity, it is the duty of the holder to give immediate notice of such dishonor to the drawer, if it be a bill, and to the indorser, whether it be a bill or note.[3]

§ 150. In general. We shall now consider the matter of presentment and notice of dishonor. What was the contract of the drawer and the indorser? He says, "I will pay this instrument if you present the instrument to the parties to whom it should be presented and by whom it should be accepted, and if they do not pay it or accept it, I will pay it, but my contract is that it must be presented to them first." Now, if it is not shown that the instrument was presented for acceptance or payment then he will not be liable on it. These things may be waived by contract, but when not waived they must be established. Presentment for acceptance or presentment for payment must be made in order to hold certain parties on the instrument because that is the contract they enter into.

As to presentment for payment the contract of the drawer is that he will pay the instrument providing the acceptor does not, and he is duly notified of that fact.[4] The indorser makes the same contract with his subsequent indorsers. He says, "You notify me of the fact that the drawee does not pay that instrument and I will pay it." Therefore, if we are going to hold the indorsers, we must perform our part of the contract.[5] The instrument may be dishonored for failure to accept also.[6]

[2] Ocoll Bank v. Hughes, 42 Tenn. (Coldw.) 52; Williams v. Parks, 63 Neb. 747, 89 N. W. 395, 56 L. R. A. 759; Anville Nat. Bank v. Keltering, 106 Pa. St. 531, 51 Am. Rep. 536.

[3] Jagger v. Nat. German-American Bank, 53 Minn. 386; Juniata Bank v. Hale, 16 S. & R. (Pa.) 157, 16 Am. Dec. 558; Brown v. Ferguson, 4 Leigh (Va.) 37, 24 Am. Dec. 707; *In re* Leeds Banking Co., L. R. 1 Eq. 1.

[4] Los Angeles Nat. Bank v. Wallace, 101 Cal. 478, 36 Pac. 197; Baxter v. Graves, 2 A. K. Marsh (Ky.) 152, 12 Am. Dec. 374; Cruger v. Armstrong, 3 Johns. Cas. (N. Y.) 5, 2 Am. Dec. 126. As to presentment, demand and notice in general, see note 2 U. S. L. Ed. 102.

[5] Wilmington Bank v. Cooper, 1 Han. (Del.) 10; Leonard v. Olson, 99 Ia. 162, 68 N. W. 677, 61 Am. St. Rep. 230, 35 L. R. A. 381; Piscataqua Exch. Bank v. Carter, 20 N. H. 246, 51 Am. Dec. 217.

[6] Bolton v. Harrod, 9 Mart. (La.)

§ 151. Presentment for acceptance—When essential. In a previous chapter we have discussed acceptance.[7]

We shall now consider presentment for acceptance. In certain cases presentment for acceptance is not essential, and in others it is. In those jurisdictions where days of grace are recognized a bill payable at sight must be presented for acceptance. A bill payable after sight, say five days after sight, should be presented for acceptance and then after that for payment.[8] So many days after demand requires presentment for acceptance.

The Negotiable Instruments Law provides:

"Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

2. Where the bill expressly stipulates that it shall be presented for acceptance; or,

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable."[9]

§ 152. Presentment for acceptance—Benefit. What is the benefit of presentment for acceptance? A draws on B in favor of C. Well, you can see it is an advantage to A if C notifies him that B refuses to accept that instrument. A knows he must take care of himself in regard to B, and it helps C because it makes him know where he must look for his money, that is, to A.

§ 153. Presentment for acceptance—Time. The time for presentment is in a reasonable time.[10] The hour of the day for presentment, if you are presenting it to a business man, is at his office during his office hours.[11] You apply your common sense as to the time of day for the presentment.

326, 13 Am. Dec. 300; Turner v. Greenwood, 9 Ark. 44; Hymar v. Sheldon, 12 Wend. (N. Y.) 439, 27 Am. Dec. 137.

[7] See Chapter VIII, *supra*.

[8] Oleson v. Wilson, 20 Mont. 544, 52 Pac. 372, 63 Am. St. Rep. 639; Aymar v. Beers, 7 Cow. (N. Y.) 705, 17 Am. Dec. 538; Brown v. Turner, 11 Ala. 752; Mitchell v. Degrand, 1 Mason (U. S.) 176, 17 Fed. Cas. No. 9,661; Kampmann v. Williams, 70 Tex. 568, 8 S. W. 310. As to necessity to present for acceptance, see note 1 U. S. L. Ed. 640. As to presentment of demand notes to hold indorsers, see 28 U. S. L. Ed. 1044.

[9] Neg. Inst. Law, § 240 (143), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[10] Phœnix Ins. Co. v. Allen, 11 Mich. 501, 83 Am. Dec. 756; Thornburg v. Emmons, 23 W. Va. 325; Bolton v. Harrod, 9 Mart. (La.) 326, 13 Am. Dec. 306; Aymar v. Beers, 7 Cow. (N. Y.) 705, 17 Am. Dec. 538; Jordan v. Wheeler, 20 Tex. 698.

[11] Nelson v. Fotterall, 7 Leigh (Va.) 179; Parker v. Gordon, 7 East. 385, 6 Esp. 41.

The Negotiable Instruments Law has the following provisions covering this subject:

"Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged."[12]

"A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections one hundred and thirty-two and one hundred and forty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day."[13]

"Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers."[14]

§ 154. When instrument dishonored by non-acceptance. As to when an instrument is dishonored by non-acceptance the Negotiable Instruments Law provides:

"A bill is dishonored by non-acceptance: (1) When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; (2) When presentment for acceptance is excused and the bill is not accepted."[15]

"Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance, or he loses the right of recourse against the drawer and indorsers."[16]

"When a bill is dishonored by non-acceptance an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary."[17]

[12] Neg. Inst. Law, § 241 (144), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[13] Neg. Inst. Law, § 243 (146), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[14] Neg. Inst. Law, § 244 (147), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[15] Neg. Inst. Law, § 246 (149), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[16] Neg. Inst. Law, § 247 (150), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[17] Neg. Inst. Law, § 248 (151), where all cases directly or indirectly bearing upon or citing the Law are grouped.

It should be here noted that the Negotiable Instruments Law provides:

"Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon."[17a]

§ 155. Presentment for payment—In general. The engagement entered into by the acceptor of a bill and the maker of a note is, that it shall be paid at its maturity—that is, on the day that it falls due, and at the place specified for payment, if any place be designated—upon its presentment.[18] This engagement is absolute, but that of the drawer of a bill and the indorser of a bill or note is conditional and contingent upon the true presentment at maturity, and notice in case it is not paid.[19]

It is not necessary that a presentment for payment should be personal. It is sufficient if made at the place specified in the instrument,[20] or personally if the maker or acceptor waives his right of having it made at the place stipulated in the contract,[21] or, if no place is specified in the instrument, then if made at the place of business or residence of the maker or acceptor.[22]

"The drawer of a bill and any indorser may insert thereon the name of person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not, as he may see fit."[22a]

§ 156. Presentment for payment—When essential. As to when presentment for payment is essential the law generally is as set out in the Negotiable Instruments Law which provides as follows:

[17a] Neg. Inst. Law, § 147 (87), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[18] Cox v. Nat. Bank, 100 U. S. 712; Jeune v. Ward, 1 B. & Ald. 653; Snope v. Ross, 40 Pa. St. 186, 80 Am. Dec. 567.

[19] Johnson v. Zeckendorf (Ariz. 1886), 12 Pac. 65; Jones v. Robinson, 11 Ark. 504, 54 Am. Dec. 212; Grange v. Reigh, 93 Wis. 552. As to demand as against maker of note or acceptor of bill, see note 6 U. S. L. Ed. 443. As to usage or custom as controlling and varying demand, notice, and days of grace, see note 6 U. S. L. Ed. 512.

[20] Wolfe v. Jewett, 10 La. 383; Goodloe v. Godley, 13 Sm. & M. (Miss.) 233; Brownell v. Freese, 35 N. J. L. 285, 51 Am. Dec. 150, 10 Am. Rep. 239; McKenney v. Whipple, 21 Me. 98; Freeman v. Curran, 1 Minn. 161.

[21] King v. Crowell, 61 Me. 244, 14 Am. Rep. 560; Townsend v. Chas. H. Heer Dry Goods Co., 85 Mo. 503; King v. Holmes, 11 Pa. St. 456.

[22] Sharnburgh v. Cemmagere, 10 Mart. (La.) 18; Simmons v. Bet., 35 Mo. 461; Sussex Bank v. Baldwin, 17 N. J. L. 487; Oxnard v. Varnum, 111 Pa. St. 193, 2 Atl. 224, 56 Am. Rep. 255. As to banking customs as to demand and notice, see note 21 L. R. A. 441.

[22a] Neg. Inst. Law, § 215 (131), where all cases directly or indi-

"Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity and has funds there available for that purpose, such ability and willingness are equivalent to a tender of payment upon his part."[23]

"Presentment for payment is necessary in order to charge the drawer and indorsers."[24]

"Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument."[25]

And "presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented."[26]

§ 157. Presentment for payment—When dispensed with. Presentment for payment may be dispensed with as set out by the terms of the Negotiable Instruments Law which provides:

"Presentment for payment is dispensed with: (1) Where after the exercise of reasonable diligence presentment as required by this act cannot be made; (2) where the drawee is a fictitious person; (3) by waiver of presentment express or implied."[27]

§ 158. Presentment for payment—What sufficient. As to what constitutes a sufficient presentment the Negotiable Instruments Law provides:

"Presentment for payment, to be sufficient, must be made: (1) By the holder, or by some person authorized to receive payment on his behalf; (2) at a reasonable hour on a business day; (3) at a proper place as herein defined; and (4) to the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made."[28]

rectly bearing upon or citing the Law are grouped.

[23] Neg. Inst. Law, § 130 (70), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[24] See cases in preceding note. As to presentment when paper held as collateral or conditional payment, see note 68 L. R. A. 487.

[25] Neg. Inst. Law, § 139 (79), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[26] Neg. Inst. Law, § 140 (80), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[27] Neg. Inst. Law, § 142 (82), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[28] Neg. Inst. Law, § 132 (72), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to necessity of actual presentment to effect dishonor, see note 13 L. R. A. (N. S.) 303.

"The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered to the party paying it."[29] This is the law generally.

§ 159. Presentment for payment—Date. In ascertaining the proper date for presentment the day of the date is excluded so where the paper is payable one year from date it will mature on the first anniversary of that date. The Negotiable Instruments Law provides:

"Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment."[30]

Thus in an instrument payable so many days after sight, or after date, the day of sight or date is excluded and the day of payment included in the computation.[31]

Another provision relating to the date of presentment is the following:

"Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof."[32]

Presentment for payment cannot be made on a Sunday or legal holiday, and if the note matures on a holiday or Sunday, since the maker[33] cannot be compelled to pay sooner than he had promised, the note or bill will have to be presented on the next business day.

The Negotiable Instruments Law provides:

"Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve

[29] Neg. Inst. Law, § 134 (74), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[30] Neg. Inst. Law, § 146 (86), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[31] Mitchell v. Degrand, 1 Mason (U. S.) 176, 17 Fed. Cas. No. 9,661; Coleman v. Sayer, 1 Barn. K. B. 303.

[32] Neg. Inst. Law, § 131 (71), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[33] Neg. Inst. Law, § 5 (194) and § 145 (85), where all cases directly or indirectly bearing upon or citing the Law are grouped.

o'clock noon on Saturday when that entire day is not a holiday."[34]

By usage the banks in some states give notice to the promisor a few days before maturity of the fact that the paper will be due on a named day, and it has been held that this preliminary notice will take the place of a formal presentment on the day of maturity.

§ 160. **Presentment for payment—When delay excused.** As to when delay in making presentment for payment is excused the following provision in the Negotiable Instruments Law sets out the law in general:

"*Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.*"[35]

§ 161. **Presentment for payment—Place.** The following provisions are found in the Negotiable Instruments Law, and represent the law generally, as to the place of presentment for payment:

"*Presentment for payment is made at the proper place: (1) Where a place of payment is specified in the instrument and it is there presented. (2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented. (3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment. (4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.*"[36]

"*Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.*"[37]

§ 162. **Presentment for payment to whom.** When a bill is payable generally or at a particular place no presentment is

[34] Neg. Inst. Law, § 5 (194) and § 145 (85), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[35] Neg. Inst. Law, § 141 (81), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[36] Neg. Inst. Law, § 133 (73), where all cases directly or indirectly bearing upon or citing the Law are grouped. See also note 12 L. R. A. 727.

[37] Neg. Inst. Law, § 135 (75), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to parol agreement as to place of demand, when valid, see note 7 U. S. L. Ed. 65.

necessary to charge the acceptor, as it is his duty to be on hand to pay or seek out his creditor to pay him.[38]

"Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if with the exercise of reasonable diligence, he can be found."[39]

"Where there are several persons not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all."[40]

"Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm."[41]

There is no doubt that a clerk found at the counting-room of the acceptor or promisor is a competent party for presentment for payment to be made to, without showing any special authority given him.[42] But where the protest stated the mere fact of presentment "at the office of the maker," it will be considered insufficient, as not showing that the paper was presented to the party authorized to pay or refuse payment. A demand upon the servant of the owner who used to pay money for him was held sufficient in England.[43]

§ 163. Presentment for payment—Effect of failure to present. The maker and acceptor are bound, although the bill or note be not presented on the day it falls due;[44] but the drawer and indorsers are discharged if such presentment be not made, unless some sufficient cause excuses the holder for failure to perform that duty.[45]

[38] Cooperstown Bank v. Woods, 28 N. Y. 545; Goodloe v. Godley, 13 Sm. & M. (Miss.) 233, 51 Am. Dec. 150; De Wolf v. Murray, 2 Sandf. (N. Y.) 166.

[39] Neg. Inst. Law, § 136 (76), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[40] Neg. Inst. Law, § 138 (78), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[41] Neg. Inst. Law, § 137 (77), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[42] Stewart v. Eden, 2 Caines (N. Y.) 121; Draper v. Clemens, 4 Mo. 52; Stainback v. Clemens, 11 Gratt. 260.

[43] Bank of England v. Newman, 12 Mod. 241.

[44] Steiner v. Jeffries, 118 Ala. 573, 24 So. 37; Greeley v. Whitehead, 35 Fla. 523, 17 So. 643, 48 Am. St. Rep. 258; Westcott v. Patton, 10 Colo. App. 544, 51 Pac. 1021.

[45] Jones v. Robinson, 11 Ark. 504, 54 Am. Dec. 212; Wylie v. Cotter, 170 Mass. 356, 49 N. E. 746, 64 Am. St. Rep. 305; Piscataqua Exch. Bank v. Carter, 20 N. H. 246, 57 Am. Dec. 217; Los Angeles Nat. Bank v. Wallace, 101 Cal. 478, 36 Pac. 197.

§ 164. When instrument dishonored by non-payment. *"The instrument is dishonored by non-payment when: (1) It is duly presented for payment and payment is refused or cannot be obtained; or (2) presentment is excused, and the bill is overdue and unpaid."*[46]

§ 165. Notice of dishonor—In general. Notice of dishonor is bringing either verbally or by writing, to the knowledge of the drawer or the indorser of an instrument, the fact that a specified negotiable instrument, upon proper proceedings taken, has not been accepted, or has not been paid, and that the party notified is expected to pay it.[47]

"The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails."[48]

§ 166. Contents of notice. In order that the notice may be complete, it should contain, (1) a sufficient description of the bill or note;[49] (2) a statement that it had been presented for acceptance or payment, and had been dishonored;[50] (3) a statement that the paper had been protested,[51] and (4) an announcement of the intention of the holder to look to the party addressed for payment.[52]

A statement of non-payment is not sufficient without a statement that presentment and demand had been made, but if the word "dishonored" is used it is held to be sufficient without further statement of presentment and demand.

Notice is sufficient if the necessary facts can reasonably be inferred from the terms of the notice.

"A written notice need not be signed, and an insufficient

[46] Neg. Inst. Law, § 143 (83), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[47] Martin v. Brown, 75 Ala. 442; Ticonic Bank v. Stackpole, 41 Me. 321, 66 Am. Dec. 246. As to notice of demand, non-payment, and protest in general, see note 5 U. S. L. Ed. 215.

[48] Neg. Inst. Law, § 167 (96), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[49] Brown v. Jones, 125 Ind. 375, 25 N. E. 452, 21 Am. Rep. 227; Dodson v. Taylor, 56 N. J. L. 11, 28 Atl. 316; Alexandria Bank v. Swann, 9 Pet. (U. S.) 33, 9 L. Ed. 40.

[50] Townsend v. Lorain Bank, 2 Ohio St. 345; Sinclair v. Lynch, 1 Speers (S. C.) 244; Newberry v. Trowbridge, 4 Mich. 391.

[51] Kellogg v. Pacific Box Factory, 57 Cal. 327; Selden v. Washington, 17 Md. 379, 79 Am. Dec. 659; Etting v. Schuylkill Bank, 2 Pa. St. 355, 44 Am. Dec. 205; Tevis v. Wood, 5 Cal. 393.

[52] U. S. Bank v. Norwood, 1 Harr. & J. (Md.) 423; Burgess v. Vreeland, 24 N. J. L. 71, 59 Am. Dec. 408.

written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby."[53]

No misdescription of the amount,[54] or of the date, or of the names of the parties,[55] or of the time the paper falls due,[56] or other defect vitiates the notice of dishonor, unless it misleads the party to whom sent.

§ 167. **By whom given and when to be given.** The proper party to give the notice is the holder[57] or his authorized agent,[58] or an indorser who is at the time of giving it liable on the bill and who has a right of recourse against the party to whom notice is given.[59] That is, the notice must be given by a party to the paper or his agent, and a total stranger cannot give proper notice of dishonor.[60] The notary may give the notice as agent for the holder, and so may any bank holding the paper for collection.[61]

"*The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up, would have a right to reimbursement from the party to whom notice is given.*"[62]

"*Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.*"[63]

[53] Neg. Inst. Law, § 166 (95), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[54] King v. Hurley, 85 Me. 525; Alexandria Bank v. Swann, 9 Pet. (U. S.) 33, 9 L. Ed. 40; McKnight v. Lewis, 5 Barb. (N. Y.) 681. See Renner v. Downer, 23 Wend. (N. Y.) 620.

[55] Brown v. Jones, 125 Ind. 375, 25 N. E. 452, 21 Am. St. Rep. 227; Mainer v. Spurlock, 9 Rob. (La.) 161; King v. Hurley, 85 Me. 525, 27 Atl. 463; Carter v. Bradley, 19 Me. 62, 36 Am. Dec. 735.

[56] Saltmarsh v. Tuthill, 13 Ala. 390; Smith v. Whiting, 12 Mass. 6, 7 Am. Dec. 25; Gates v. Beecher, 60 N. Y. 518, 19 Am. Rep. 207.

[57] Tindal v. Brown, 1 T. R. 167, 1 Rev. Rep. 171; *Ex parte* Barclay, 7 Ves. Jr. 597.

[58] Lindesborg Bank v. Ober, 31 Kan. 599, 3 Pac. 324; Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Waldron v. Turpin, 15 La. 552, 35 Am. Dec. 210.

[59] Glasgow v. Pratte, 8 Mo. 336, 40 Am. Dec. 142; Stanton v. Blossom, 14 Mass. 116, 7 Am. Dec. 198; Linn v. Horton, 17 Wis. 151.

[60] Beal v. Alexander, 6 Tex. 531; Brailsford v. Williams, 15 Md. 150, 74 Am. Dec. 559; Brower v. Wooten, 4 N. C. 507, 7 Am. Dec. 692.

[61] Lindsborg Bank v. Ober, 31 Kan. 599, 3 Pac. 324; Couch v. Sherrill, 17 Kan. 622; Warren v. Gilman, 17 Me. 360; Blackeslee v. Hewett, 76 Wis. 341, 44 N. W. 1105.

[62] Neg. Inst. Law, § 161 (90), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[63] Neg. Inst. Law, § 162 (91), where all cases directly or indi-

"Where the instrument has been dishonored in the hands of an agent he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal, upon the receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder."[64]

If the holder die before the time for presentment for payment, it must be made by his personal representative.[65] If there be no personal representative at the time, presentment and demand within a reasonable time after his appointment will be sufficient to charge subsequent parties, although presentment and demand were not made at maturity.

§ 168. Notice of dishonor—To whom given. As to whom notice of dishonor should be given the Negotiable Instruments Law provides:

"When a negotiable instrument has been dishonored by non-acceptance or non-payment notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged,"[66] and

"Notice of dishonor may be given either to the party himself or to his agent in that behalf."[67]

The proper party or parties to be given notice are the drawer,[68] indorser or indorsers,[69] or their authorized agent or other person entitled to receive notice for them.[70] That is, the notice must be given to all persons secondarily liable whom the holder wishes to charge. And notice should be given to indorsers who have indorsed for the purpose of collection,[71] and indorsers of over-

rectly bearing upon or citing the Law are grouped.

[64] Neg. Inst. Law, § 165 (94), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[65] White v. Stoddard, 11 Gray (Mass.) 258, 71 Am. Dec. 711; Rand v. Hubbard, 4 Metc. (Mass.) 252.

[66] Neg. Inst. Law, § 160 (89), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to sufficiency of notice to indorser, see note 12 L. R. A. 731.

[67] Neg. Inst. Law, § 168 (97), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[68] Patillo v. Alexander, 96 Ga. 60, 22 S. E. 646, 29 L. R. A. 616; Baxter v. Graves, 2 A. K. Marsh. (Ky.) 152, 12 Am. Dec. 374.

[69] McLanahan v. Brandon, 1 Mart. (N. S.) La. 321, 14 Am. Dec. 188; Fotheringham v. Price, 1 Bay. (S. C.) 291, 1 Am. Dec. 618; Peabody Ins. Co. v. Wilson, 29 W. Va. 528, 2 S. E. 888.

[70] Crowley v. Berry, 4 Gill. (Md.) 194; Coffman v. Commonwealth Bank, 41 Miss. 212, 90 Am. Dec. 371. As to whom given after appointment of receiver or assignee, see note 61 L. R. A. 900.

[71] Elizabeth State Bank v. Ayers, 7 N. J. L. 130, 11 Am. Dec. 535; U. S. Bank v. Davis, 2 Hill (N. Y.) 451.

due paper.[72] Where there are two or more joint drawers or indorsers who are not partners, notice of dishonor must be given to them all in order to bind either.[73]

When the note is executed by several joint promisors who are not partners, but liable only as joint and several promisors, it has been held, that presentment should be made to each, in order to fix the liability of an indorser.

And as provided by the Negotiable Instruments Law:

"Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others."[74]

"Where the parties to be notified are partners notice to any one partner is notice to the firm, even though there has been a dissolution."[75]

"Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee."[76]

Notice left with a clerk or person in charge, at the party's place of business, in his absence, or at his place of business,[77] without proof as to the person with whom it was left, is sufficient, and proof that such person was not the party's agent has been held irrelevant, notice being left at the right place. Hence, leaving it with his private secretary at his public office is sufficient. If service be sought on the party at his dwelling, it is sufficient to leave notice with his wife, or with any other person on his premises.[78]

"When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be

[72] Beer v. Clifton, 98 Cal. 323, 33 Pac. 204, 55 Am. St. Rep. 172, 20 L. R. A. 580; Grand v. Strutzel, 53 Ia. 712, 6 N. W. 119, 36 Am. Rep. 250.

[73] People's Bank v. Keech, 26 Md. 521, 90 Am. Dec. 118; Willis v. Green, 5 Hill (N. Y.) 232, 40 Am. Dec. 351.

See note 36 L. R. A. 703.

[74] Neg. Inst. Law, § 171 (100), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[75] Neg. Inst. Law, § 170 (99), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[76] Neg. Inst. Law, § 172 (101), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[77] Crowley v. Barry, 4 Gill (Md.) 194; Coffman v. Commonwealth Bank, 41 Miss. 212, 90 Am. Dec. 371.

[78] Mercantile Bank v. McCarthy, 7 Mo. App. 318; Colms v. Bank of Tenn., 4 Baxt. 422; Bank of Ky. v. Duncan, 4 Bush. (Ky.) 294; U. S. v. Hatch, 1 McLean (U. S.) 92.

sent to the last residence or last place of business of the deceased."[79]

§ 169. Notice of dishonor—Time. As to the time in which notice must be given the Negotiable Instruments Law provides:

"Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this act."[80]

The law as to parties residing in the same place is as follows:

"Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times: (1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following; (2) if given at his residence, it must be given before the usual hours of rest on the day following; (3) if sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following."[81]

And where the parties reside in different places the law is:

"Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times: (1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter; (2) if given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision."[82]

As to time of giving notice to a subsequent party the law is:

"Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor."[83]

§ 170. Notice of dishonor—Place of sending. The Negotiable Instruments Law sets out the law as to the place of sending the notice of dishonor. It states:

[79] Neg. Inst. Law, § 169 (98), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[80] Neg. Inst. Law, § 173 (102), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to time within which notice of dishonor must be given, see note 12 L. R. A. 729.

[81] Neg. Inst. Law, § 174 (103), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[82] Neg. Inst. Law, § 175 (104), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[83] Neg. Inst. Law, § 178 (107), where all cases directly or indi-

"Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows: (1) Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or (2) if he live in one place, and have his place of business in another, notice may be sent to either place; or (3) if he is sojourning in another place, notice may be sent to the place where he is sojourning. But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section."[84] This is also the law generally.

§ 171. Notice of dishonor—Through postoffice. As to sending notice through the postoffice the Negotiable Instruments Law states:

"Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given notice, notwithstanding any miscarriage in the mail."[85]

"Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or any letter box under the control of the postoffice department."[86]

That is, if a notice be given by the holder to an indorser by mail, addressed to the indorser at the postoffice nearest his residence and deposited in the postoffice at the proper time, the indorser will be charged whether he received the notice or not. The letter containing the notice must be posted early enough to be sent by mail on the day succeeding the dishonor of the instrument.

§ 172. Notice of dishonor—When unnecessary. Notice of dishonor is dispensed with: (1) When the drawer or indorser sought to be charged is, as between the parties to the bill, the principal debtor, and has no reason to expect that it will be honored on presentment.[87] (2) As regards the drawer, when drawer and drawee are the same person, or identical in interest.[88]

rectly bearing upon or citing the Law are grouped.

[84] Neg. Inst. Law, § 179 (108), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[85] Neg. Inst. Law, § 176 (105), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to service of notice by mail, see note 12 L. R. A. 731.

[86] Neg. Inst. Law, § 177 (106), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[87] Kupfer v. Galena Bank, 34 Ill. 328, 85 Am. Dec. 309; Culver v. Marks, 122 Ind. 554, 23 N. E. 1086, 17 Am. St. Rep. 377, 7 L. R. A. 489; Merchants Bank v. Easley, 44 Mo. 286, 100 Am. Dec. 287. As to when drawer or indorser is not entitled to notice, see note 2 U. S. L. Ed. 102.

[88] Planters Bank v. Evans, 36

(3) When the drawer or indorser sought to be charged is the person to whom the bill is presented for payment. (4) When the drawee is fictitious and the drawer or indorser sought to be charged was aware of the fact at the time he drew or indorsed the bill.[89] (5) When the drawer or indorser sought to be charged has received an assignment of all the property of the acceptor as security against his liability.[90] (6) When, after the exercise of reasonable diligence, no notice of dishonor can be given to or does not reach the party sought to be discharged.[91]

The Negotiable Instruments Law has the following provisions as to when notice of dishonor is unnecessary and they represent the law generally:

"Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation."[92]

"Notice of dishonor is not required to be given to the drawer in either of the following cases: (1) Where the drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the instrument is presented for payment; (4) where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument; (5) where the drawer has countermanded payment."[93]

"Notice of dishonor may be waived, either before the time of giving notice has arrived or after the omission to give due notice, and the waiver may be express or implied."[94]

"Notice of dishonor is dispensed with when, after the exercise

Tex. 592; New York etc. Co. v. Selma Sav. Bank, 51 Ala. 305; Gowan v. Jackson, 20 Johns. 176.

[89] Groth v. Gyger, 31 Pa. St. 271; Magruder v. Union Bank, 3 Pet. 87.

[90] Prentiss v. Danielson, 5 Conn. 175, 13 Am. Dec. 52; Mead v. Small, 2 Me. 207, 11 Am. Dec. 62; Perry v. Green, 19 N. J. L. 61, 38 Am. Dec. 536.

[91] Walker v. Stetson, 14 Ohio St. 89, 84 Am. Dec. 362; Galpin v. Hard, 3 McCord (S. C.) 394, 15 Am. Dec. 640; Miranda v. New Orleans City Bank, 6 La. 740, 26 Am. Dec. 493; Tunstall v. Walker, 2 Sm. & M. (Miss.) 638.

[92] Neg. Inst. Law, § 186 (115), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[93] Neg. Inst. Law, § 185 (114), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[94] Neg. Inst. Law, § 180 (109),

of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged."[95]

§ 173. Notice of dishonor—Excuse for failure to give notice. Certain excuses for failure to give notice of dishonor are permitted, thus:

"Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence."[96]

When political disturbances interrupt and obstruct the ordinary negotiations of trade, they constitute a sufficient excuse for want of presentment or notice, upon the same principle that controls in cases of military operations or interdictions of commerce.[97]

So the prevalence of a malignant, contagious, or infectious disease, such as the cholera, yellow fever, the plague, or smallpox, which has become so extensive as to suspend all commercial business and intercourse, or to render it very hazardous to enter into the infected district, is recognized by the text writers as a sufficient excuse for not doing any act which would require an entry into such district.[98]

Where presentment or notice of dishonor has been waived by express agreement or is implied in the acts of the parties, it is unnecessary;[99] when sudden illness or death of, or accident to, the holder or his agent prevents the presentment of the bill or note in due season, or the communication of notice, the delay is excused, provided presentment is made and notice given as promptly afterward as the circumstances reasonably permit.[1]

where all cases directly or indirectly bearing upon or citing the Law are grouped.

[95] Neg. Inst. Law, § 183 (112), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[96] Neg. Inst. Law, § 184 (113), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[97] Peters v. Hobbs, 25 Ark. 67, 91 Am. Dec. 526; House v. Adams, 48 Pa. St. 261, 86 Am. Dec. 426; Ray v. Smith, 17 Wall. (U. S.) 411, 21 L. Ed. 666.

[98] Tunno v. Lague, 2 Johns. Cas. (N. Y.) 1, 1 Am. Dec. 141; Hanover v. Anderson, 16 Lea (Tenn.) 340.

[99] Markland v. McDaniel, 51 Kan. 350, 32 Pac. 1114, 20 L. R. A. 96; Hibbard v. Russell, 16 N. H. 410, 41 Am. Dec. 733; Schmidt v. Radcliffe, 4 Strobh. (S. C.) 296, 53 Am. Dec. 678; Hale v. Damford, 46 Wis. 554, 1 N. W. 284. As to indorser's promise to pay or acknowledgment of liability after maturity as waiver of lack of notice, see note 6 U. S. L. Ed. 596. Immaterial whether indorser receives notice if due diligence used in sending it, see note 11 U. S. L. Ed. 1000.

[1] White v. Stoddard, 11 Gray (Mass.) 258, 71 Am. Dec. 711;

This doctrine rests upon the same principle as that which excuses want of punctuality when overwhelming calamities or accidents of a general nature prevent. The sudden illness or death of his agent is on the same footing as when these happen to the holder himself. If the excuse be illness, it must be of such a character as to prevent due presentment and notice by the exercise of due diligence.[2]

Where the person against whom the bill is sought to be enforced has been fully secured against loss by the person principally liable on the instrument, and has promised to see to the acceptance or payment of the paper, its presentment is unnecessary.[3]

§ 174. Notice of dishonor—Effect of notice as to prior and subsequent parties. *"Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given."*[4]

"Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given."[5]

That is, notice of dishonor given by or on behalf of the holder enures to the benefit of all subsequent holders, and all prior indorsers liable on the bill who have a right of recourse against the party to whom notice is given. And notice of dishonor given by or on behalf of an indorser entitled to give notice, enures to the benefit of the holder and all indorsers liable on the bill who have a right of recourse against the party given notice.

A party who receives due notice of the dishonor of a bill, as an indorser, after the receipt of such notice, has the same time in which to give notice to antecedent parties whom he desires to hold liable, as the original holder has after the dishonor of the bill.

"Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary unless in the meantime the instrument has been accepted."[6]

Newbold v. Borsef, 155 Pa. St. 227, 26 Atl. 305; Duggan v. King, Rice (S. C.) 239, 33 Am. Dec. 107; Wilson v. Sevier, 14 Wis. 380.

[2] Wilson v. Sevier, 14 Wis. 380; Purcell v. Allemong, 22 Gratt. (Va.) 739.

[3] Prentice v. Danielson, 5 Conn. 175, 13 Am. Dec. 52; Perry v. Green, 19 N. J. L. 61, 38 Am. Dec. 536; Brandt v. Mickle, 28 Md. 436. *Contra*, Watkins v. Crouch, 5 Leigh (Va.) 522.

[4] Neg. Inst. Law, § 163 (92), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[5] Neg. Inst. Law, § 164 (93), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[6] Neg. Inst. Law, § 187 (116),

"An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission."[7]

§ 175. Protest—Method of. Protest in its popular signification includes all the steps taken to fix the liability of a drawer or indorsers,[8] but its accurate technical meaning is that it is the testimony of some proper person, usually a notary, that the regular legal steps to fix that liability have been taken by the holder.[9] Its method is for the notary himself to properly present the instrument, and demand its acceptance or payment. If these are refused, to make a minute thereof on the instrument, or in his official record; the minute consisting of his initials, the year, month, and day of dishonor, and his charges. This is done on the day of the dishonor. And on the same day, or afterwards, the notary extends the protest thus noted by embodying in a certificate the facts of the protest, and his acts in making presentment, demand, and in giving notice of dishonor. To this he generally appends his official seal.[10]

Where a notary cannot be obtained protest may be made by any respectable person.[11]

As to protest the Negotiable Instruments Law provides as follows:

"The protest must be annexed to the bill or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify: (1) The time and place of presentment; (2) the fact that presentment was made and the manner thereof; (3) the cause or reason for protesting the bill; (4) the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found."[12]

"Protest may be made by: (1) A notary public; or (2) by any

where all cases directly or indirectly bearing upon or citing the Law are grouped.

[7] Neg. Inst. Law, § 188 (117), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to effect of omission to give notice on paper held as collateral or conditional payment, see note 68 L. R. A. 482.

[8] White v. Keith, 97 Ala. 668, 12 So. 611; Ayrault v. Pacific Bank, 47 N. Y. 570, 7 Am. Rep. 489; Sprague v. Fletcher, 8 Oreg. 367, 34 Am. Rep. 587.

[9] Swayze v. Britton, 17 Kan. 625. As to liability of notaries making protest, see note 82 Am. St. Rep. 380.

[10] Leftley v. Mills, 4 T. R. 170; Gale v. Walsh, 5 T. R. 170; Rodgers v. Stephens, 2 T. R. 713.

[11] Read v. Commonwealth, 1 T. B. Mon. (Ky.) 91, 15 Am. Dec. 86; Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275. As to wrongful protest, see note 30 Am. St. Rep. 158.

[12] Neg. Inst. Law, § 261 (153), where all cases directly or indirectly bearing upon or citing the Law are grouped.

respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses."[13]

"When a bill is protested, such protest must be made on the day of its dishonor unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting."[14]

"A bill must be protested at the place where it is dishonored except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored, by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary."[15]

"A bill which has been protested for non-acceptance may be subsequently protested for non-payment."[16]

Below is given a form of protest:

FORM OF PROTEST.

UNITED STATES OF AMERICA,
State of.....
County of.....
City of..... } ss.

By this Public Instrument of Protest, be it known: That on this.....day of....., in the year of our Lord 19.., I, a Notary Public in and for the County and State aforesaid by lawful authority duly commissioned and sworn, residing in....., in the County and State aforesaid, at the request of....., holder of the original....., did present the original....., which is hereunto annexed, to....., and did demand ..... The said .....did refuse to..... the same (here insert reason, if any, why payment or acceptance was refused).

Whereupon I did protest, and by these presents do publicly and solemnly protest as well against the drawer and endorsers

[13] Neg. Inst. Law, § 262 (154), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[14] Neg. Inst. Law, § 263 (155), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[15] Neg. Inst. Law, § 264 (156), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[16] Neg. Inst. Law, § 265 (157), where all cases directly or indirectly bearing upon or citing the Law are grouped.

of the said.....as against all others whom it doth or may concern for exchange, re-exchange and all costs, charges, damages and interest heretofore incurred or to be hereafter incurred for want of the.....of the same; and I do hereby certify that on the.....day of....., one thousand nine hundred....., I did give due and written notice, signed by me, of the presentment and protest of the foregoing..... to the respective endorsers of the said instrument, and informing .....that.....held liable for the payment of said.....; and on the same day, in the evening, I deposited the same in the postoffice at....., contained in a securely sealed postpaid wrapper, duly directed and subscribed to said .....as follows, to-wit: to

.....

.....

The above-named places and addresses being the reputed place of residence and address of the persons to whom such notice was so addressed and the postoffice nearest thereto.

Thus done and protested in the City of....., in the County and State aforesaid, in the presence of ..... and ....., witnesses.

In testimony whereof, I have hereunto set my hand and affixed my official seal this.....day of....., 19.....

.....(SEAL)
Notary Public.

My Commission Expires on the ..... day of ....., 19...

FEES	
.....	Registered Vol... Page....
Protest	
Record	
Notices	
Postage	
Total .....$.....	

§ 176. **Protest—Purpose.** The dishonor must be brought to the attention of the person secondarily liable on the instrument. That is, to the indorsers or drawer.

For "*subject to the provisions of this act, when the instrument is dishonored by non-payment an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.*"[17]

The notice may be made by a notary public.[18] The instrument is presented for payment and payment is refused, then the instrument may be taken by a notary public to the party and the party may state that he refuses to pay it; the notary makes a statement to that effect and attaches his seal, that it has been dishonored, and that he has protested it for non-payment. The notary keeps this or he may send his sworn statement, one copy to one person and one to the other.[19] This is the protest, it is not the notice of protest. The protest is a solemn declaration made by the notary public that the paper has been dishonored.[20] Now, when suit is brought on the paper, it is absolutely necessary that proof be shown. So when you come to prove your case as the holder of an instrument you must prove that there has been a protest of the instrument, that it has been presented for payment or acceptance to the person liable and that it has been refused. That is part of your case. And when you come to the trial, this statement of the protest by the notary is a part of your case. It is the same as a deposition. It can go into evidence anywhere and will prove the case just the same as a deposition.

For this certificate is generally accepted as evidence of the facts set forth in its terms, and its production obviates the necessity of proof of these facts by witnesses in open court. The main purpose of the protest, therefore, is to furnish to the holder legal testimony of presentment, demand, and notice of dishonor, to be used in actions against the drawer and indorsers.

And the notary's certificate of protest is only evidence of those facts which are stated therein and which it is the duty of the notary to note in making presentment and demand for payment. Collateral facts noted by the certificate must be proved by other evidence.

A protest certificate is only *prima facie* evidence and all facts stated therein may be disproved by competent evidence showing the statements to be untrue.

[17] Neg. Inst. Law, § 144 (84), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[18] Donegan v. Woods, 49 Ala. 242, 20 Am. Rep. 275; Scrider v. Brown, 3 McLean (U. S.) 481, 21 Fed. Cas. No. 12,205.

[19] Leftley v. Mills, 4 T. R. 170; Gale v. Walsh, 5 T. R. 170; Rodgers v. Stephens, 2 T. R. 713. As to what facts certificate of notary is evidence, see note 2 U. S. L. Ed. 102.

[20] Swayze v. Britton, 17 Kan. 625. As to protest as sufficient evidence, see note 36 Am. St. Rep. 685.

§ 177. Protest—Notice of. After the notary protests the instrument he sends notice to all the parties on the instrument.[21] He can do this in several ways. He might send it to the person who sent the paper in for collection. Then the notary public would send his notice of protest for the other parties on the instrument, to the last person on the instrument, and he would say, "Notices enclosed herewith to be sent to the other parties." If the holder has sent notice to all the parties, he is entitled to come in and recover because he has performed his contract. He has sent notice to all the parties on the instrument that he intends to recover against them. Now, if the indorsee is D and he has sent notice to all the other indorsers, he can proceed against all or any one of them. C gets the notices and he sends out the notices to those who preceded him and that holds them, but they will be held already by the notices sent them by the other man. It is just performing the contract which was entered into in the way a merchant would do it. It is performing the contract which was entered into originally so that you may come within the terms of the contract.[22]

Below is given a form of notice:

FORM OF NOTICE OF PROTEST.

STATE OF....
COUNTY OF.. } ss:

....., 19..

To.....

.....

You will please take notice that a.....for .....dollars, dated..... payable ..... after ..... drawn by ..... in favor of..... on .....(accepted by).....endorsed by you and due.....has been protested by me on this day for non-.....after having made legal demand for the same.

I hereby, at the request of....., the holder

[21] Tevis v. Randall, 6 Cal. 632, 65 Am. Dec. 547; Ban v. Marsh, 9 Yerg. (Tenn.) 253.

[22] Lysaght v. Bryant, 9 C. B. 46; Smith v. Poillon, 87 N. Y. 590, 41 Am. Rep. 402; Wilson v. Swaberg, 1 Stark. 34.

thereof, notify you that the said holder looks to you for payment, damages, interest and costs as indorser thereof.

Very respectfully,

.....

Notary Public.

My Commission Expires on the .....
day of....., 19...

§ 178. Protest—What should be protested and what not necessary. As to what should be protested and what is unnecessary to protest the Negotiable Instruments Law has the following provisions:

"Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange."[23]

"Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary."[24]

A foreign bill must be presented by a notary public, because, from the needs of the case, some act of a universally recognized authority is called for.[25] By force of custom, the official act of the notary public is of recognized authority throughout the world.

Protest by notaries public of a foreign note is unnecessary, unless it is indorsed; but, if indorsed, its protest by a notary public, according to the weight of authority, is required, because the indorsement of a note is essentially a bill drawn on the maker.[26]

[23] Neg. Inst. Law, § 189 (118), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to protest of promissory note or inland bill under general law merchant, see note 5 U. S. L. Ed. 228.

[24] Neg. Inst. Law, § 260 (152), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to protest for non-acceptance, see notes 1 U. S. L. Ed. 640 and 2 U. S. L. Ed. 79.

[25] Commercial Bank v. Barksdale, 36 Mo. 563; Sussex Bank v. Baldwin, 17 N. J. L. 476; Cape Fear Bank v. Stinemetz, 1 Hill (S. C.) 44. As to liability of notary for neglect to protest, and of bank employing him, see note 16 U S. L. Ed. 466.

[26] Austin v. Rodman, 8 N. C. 194, 9 Am. Dec. 630; Carter v. Union

The convenience of proving the essential facts of dishonor by notarial certificate has caused the enactment in some of the States of statutes requiring or permitting the protesting of inland bills and notes.

§ 179. **Protest—Waiver.** Protest is waived by express or implied waiver of a presentment for payment, and protest is dispensed with by the same circumstances which would dispense with notice of dishonor in the case of an inland bill, and circumstances excusing delay in giving notice of dishonor will excuse delay in protesting.

The Negotiable Instruments Law provides:

"Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence."[27]

"Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only."[28]

"A waiver or protest whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor."[29]

§ 180. **Protest—Miscellaneous matters.** A bill dishonored for non-acceptance must be protested, but when this is done it need not be subsequently protested for non-payment.

Any holder may present the bill or note for payment and receive payment, but in case payment is refused and protest becomes necessary, the notary public who makes the protest is obliged, by law to make a second demand, so that he can of his own personal knowledge certify to the fact of dishonor.[30]

A bill must be protested at the place where it is dishonored,

Bank, 7 Humph. (Tenn.) 548, 46 Am. Dec. 671; Carmichael v. Pennsylvania Bank, 4 How. (Miss.) 567, 35 Am. Dec. 408.

[27] Neg. Inst. Law, § 267 (159), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[28] Neg. Inst. Law, § 181 (110), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to effect of waiver, see note 29 L. R. A. 313.

[29] Neg. Inst. Law, § 182 (111), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[30] Ellis v. Commercial Bank, 7 How. (Miss.) 294, 40 Am. Dec. 63; Chenowith v. Chamberlin, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145; Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275.

but if the domicile and place of payment are different it may be protested at either place.[31]

When the laws are in conflict, the validity of the protest will be determined by the law of the place where it is made.[32]

The notary's minutes made on the bill or note, such as his initials, the date and the like, are made for his convenience, since he by the law merchant is required to make the protest the same day that the presentment and demand were made, and this short form is equivalent to the protest itself, and the more formal protest may be made out later from the minutes.

When the acceptor of a bill becomes bankrupt or makes an assignment before its maturity, it may be protested for better security.[33]

"Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers."[34]

"Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it protest may be made on a copy or written particulars thereof."[35]

The notary public must present the paper, if you desire to protest it, either for non-payment or non-acceptance.[36]

The custom in some cities is to make two presentments, twice in the same day. If it is not accepted when it is presented in the forenoon it is taken back again in the afternoon and is protested.

[31] Grigsby v. Ford, 3 How. (Miss.) 184; Neeley v. Morris, 2 Head. (Tenn.) 595, 75 Am. Dec. 753.

[32] Wooley v. Lyon, 117 Ill. 244, 6 N. E. 885, 57 Am. Rep. 867; Tickner v. Roberts, 11 La. 14, 30 Am. Dec. 706; Carter v. Union Bank, 7 Humph. (Tenn.) 548, 46 Am. Dec. 89.

[33] Neg. Inst. Law, § 266 (158), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[34] Neg. Inst. Law, § 266 (158), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[35] Neg. Inst. Law, § 268 (160), where all cases directly or indirectly bearing upon or citing the Law are grouped. Hinsdale v. Miles, 5 Conn. 331; Kavanaugh v. Bank, 59 Mo. App. 540.

[36] Ellis v. Commercial Bank, 7 How. (Miss.) 294, 40 Am. Dec. 63; Chenowith v. Chamberlain, 6 B. Mon. (Ky.) 60, 43 Am. Dec. 145; Donegan v. Wood, 49 Ala. 242, 20 Am. Rep. 275.

CHAPTER XVII.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§ 181. In general.
182. By payment.
183. By payment for honor.
184. By cancellation and surrender.
185. By covenant not to sue.
186. By accord and satisfaction.
187. By substitution of another obligation.
188. By alteration.
189. By the principal debtor becoming the holder in his own right.
190. By operation of law.
191. By renunciation of holder.
192. When a person secondarily liable, discharged.

§ 181. In general. Some writers treat this subject under the head of defense while others treat it as the performance of an obligation contracted. It will be treated here largely in the nature of a discharge of a contract.

The Negotiable Instruments Law provides, as follows:

"*A negotiable instrument is discharged:*

1. By payment in due course by or on behalf of the principal debtor.

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

3. By the intentional cancellation thereof by the holder.

4. By any other act which will discharge a simple contract for the payment of money.

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right."[1]

§ 182. By payment. Negotiable instruments may be discharged by payment.[2] This is the most usual way of perfecting a discharge of the bill or note. The very nature of the word payment indicates that it is a discharge of a contract to pay money by giving to the party entitled to receive it the amount agreed to be paid by one of the parties to the contract. Payment is not a contract but is rather a manner of discharging a contract in which one party has a right to demand a sum of money and in which the other party has a right to receive the money. Then by payment is meant the discharge of a contract

[1] Neg. Inst. Law, § 200 (119), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to part payment by one party discharging other parties only *pro tanto*, see note 2 U. S. L. Ed. 79.

[2] Ballard v. Gremburch, 24 Me. 336; Dooley v. Va. Fire & Marine Ins. Co., Fed. Cas. No. 3,999, 3 Hughes (U. S.) 221; Christman v. Harmon, 29 Gratt. 494. As to effect of payment by indorser, see note 14 Am. St. Rep. 794; and as

to pay money by giving to the party entitled to receive it, the amount agreed to be paid by one of the parties who entered into the agreement.[3] Payment as stated above is not a contract. It is the discharging of a contract in which the party of the first part has a right to demand payment, and the party of the second part has a right to make payment. A sale is altogether different. It is a contract which does not extinguish a bill or note, but continues it in circulation as a valid security against all parties. And it is necessary to constitute a transaction a sale that both parties should expressly or impliedly agree, the one to sell and the other to purchase the paper. Whether the transaction is a purchase or payment is a question for the jury where the facts are in dispute, to be resolved according to the intention of the parties, by looking to the substance of the matter rather than its form. Payment is usually made by the principal debtor and is a complete discharge of the instrument, that is, "*a negotiable instrument is discharged by payment in due course by or on behalf of the principal debtor*"[4] because it is the performance of a contract according to its terms by the person primarily liable. Payment may be made by any other person than the principal debtor. But in order that he may in turn recover from the maker it is necessary for him to ascertain whether there has been presentment, protest and notice, because in default of these steps in this particular case the maker would not be liable to him. It is also advisable for him to inform himself as to the identity of the holder and determine as to whether or not he has the legal title to the instrument, "*and payment to him in due course discharges the instrument.*"[5] Payment always discharges the instrument when made to the proper party but it does not discharge all the parties. The principal debtor must pay the amount of the instrument before he is discharged.[6] But it must be understood that not any one who desires may pay the instrument and then recover of the maker. He must be a person who has in some way made himself liable for the payment of the instrument. There is however one exception to this, and that is where an instrument has been protested and

to necessity of surrender, see note 1 Am. St. Rep. 184; and as to presumption of payment from lapse of time, see 18 Am. St. Rep. 882.

[3] Kendall v. Brownson, 47 N. H. 186; Green v. Hughitt School Tp., 5 S. D. 452, 59 N. W. 224.

[4] Neg. Inst. Law, § 200 (119), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[5] Neg. Inst. Law, § 90 (51), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[6] King v. Hannah, 6 Ill. App.

some one comes in and makes "payment *supra* protest" or "for honor."

"*A negotiable instrument is discharged:*

By payment in due course by the party accommodated where the instrument is made or accepted for accommodation."[7]

Any party to a bill or note may pay it, and an indorser who has been discharged by failure of notice may still sue a prior indorser or other parties who were not discharged, because, although not compelled to pay it, he acquires the right of the holder from whom he took the instrument, or is remitted to his own rights as indorsee.[8]

A mere stranger to the paper cannot make payment without the consent of the holder unless he represents a party liable thereon, or makes payment *supra* protest.[9]

Where payment is made by a party who is not the primary obligor or an accommodation party, his payment only cancels his own liability, and those who are obligated after him. All prior parties, primarily or secondarily liable on the bill, are liable to such a payer, and the payer may cancel indorsements subsequent to his own and reissue the paper, and it will be valid as against the prior parties.

The Negotiable Instruments Law covers this by the following provision:

"*Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:*

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated."[10]

Payment of a bill or note should be made to the legal owner or holder thereof, or some one authorized by him to receive it.[11]

495; Leeke v. Hancock, 76 Cal. 127, 17 Pac. 937; Mead v. Small, 2 Me. 207, 11 Am. Dec. 62.

[7] Neg. Inst. Law, § 200 (119), subd. 2, where all cases directly or indirectly bearing upon or citing the Law are grouped.

[8] Ellsworth v. Brewer, 11 Pick. 316; Commonwealth Bank v. Floyd, 4 Metc. (Ky.) 159; Meyer v. Spencer, 9 Mo. App. 590; Ticonic Nat. Bank v. Bagley, 68 Me. 249. But see Turner v. Leech, 4 B. & Ald. 457, 6 E. C. L. 556; Roscow v. Hardy, 2 Campb. 458, 12 East 434.

[9] Burton v. Slaughter, 26 Gratt. 919.

[10] Neg. Inst. Law, § 202 (121), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[11] Stuart v. Asher, 15 Colo. App. 403, 62 Pac. 1051; Walter v. Logan, 63 Kan. 193, 65 Pac. 225; Chicago

If it be payable to bearer or indorsed in blank, any person having it in possession may be presumed to be entitled to receive payment, unless the payer have notice to the contrary; and a payment to such person will be valid, although he may be a thief, finder or fraudulent holder.

"Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective."[12]

The maker of a note or the acceptor of a bill must satisfy himself, when it is presented for payment, that the holder traces his title through genuine indorsements; for if there is a forged indorsement it is a nullity and no right passes by it.[13]

The party making payment should insist on the presentment of the paper by the party demanding payment, in order to make sure that it is at the time in his possession, and not outstanding in another. And if at the time he makes payment it is outstanding, and held by a *bona fide* holder for value, he will be liable to pay it again, and a receipt taken will be no protection. The party making payment of the bill or note should also not fail to insist upon its being surrendered up, as a voucher that the party receiving the money was entitled to do so and also that he has paid it to him.

The party bound to make payment has no right to do so in any other medium than that expressed on the face of the instrument—that is, he must make payment in money.[14]

When payment of a bill or note is made by giving another note or bill,—other than notes treated as legal tender,—as a general rule, such payment will not be considered absolute until the paper given in payment has been itself paid, except where the parties expressly or impliedly agree that the claim shall be discharged by such payment.[15]

etc. Ry. Co. v. Burns, 61 Neb. 793, 86 N. W. 724; Patten v. Fullerton, 27 Me. 58.

[12] Neg. Inst. Law, § 148 (88), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[13] Harter v. Mechanics Nat. Bank, 63 N. J. L. 578, 44 Atl. 715, 76 Am. St. Rep. 224; Tolman v. Am. Nat. Bank, 22 R. I. 462, 48 Atl. 480, 84 Am. St. Rep. 850, 52 L. R. A. 877; Lane v. Nuffer, 5 N. Y. S. 421, 25 N. Y. St. 823.

[14] Galena Ins. Co. v. Kupfer, 28 Ill. 332, 81 Am. Dec. 284; Graydon v. Patterson, 13 La. 256, 81 Am. Dec. 432; Klauber v. Biggerstaff, 47 Wis. 551, 3 N. W. 357, 32 Am. Rep. 773; Williamson v. Smith, 1 Coldw. (Tenn.) 1, 78 Am. Dec. 478.

[15] Stanley v. McElrath, 86 Cal. 449, 25 Pac. 16, 10 L. R. A. 545; Granite Nat. Bank v. Firch, 145 Mass. 567, 14 N. E. 650, 1 Am. St. Rep. 484; Cadiz Bank v. Slemmons, 34 Ohio St. 142, 32 Am. Rep. 364.

A distinction is made by some authorities when the payer gives his own note in payment and when he gives the note or bill of another. In the first instance it is uniformly treated as a conditional payment.[16] When a stranger's note is given in payment for a precedent debt it is also generally treated as a conditional payment,[17] but if given in satisfaction of a contemporaneous debt it is held to be an absolute payment if so transferred as to end the transferrer's liability thereon, that is, without indorsement.[18]

A new bill or note given in renewal of an old one retained by the payee is also held to constitute but a suspension of the old one until the new one is paid.

The conditional payment operates to suspend the right of action on the original paper until the paper taken in payment falls due, then the holder can sue, at his election, on either of the obligations.[19]

A part payment of a bill or note which has fallen due only extinguishes it *pro tanto*, and an agreement that it shall be in full discharge of the debt does not make such part payment any more effectual as to the residue, there being no sufficient consideration for the discharge of the whole.[20] But any agreement by way of compromise or composition, into which any new element entered, would be sustained, and if the claim were disputed, agreement to receive part payment in full would discharge it.[21]

§ 183. By payment for honor. *"Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn."*[22]

"The payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by

[16] Winsted Bank v. Webb, 39 N. Y. 325, 100 Am. Dec. 435; Nightingale v. Chafee, 11 R. I. 609, 23 Am. Rep. 531; Scott v. Gilkey, 153 Ill. 168, 39 N. E. 265.

[17] Gibson v. Tobey, 46 N. Y. 637, 7 Am. Rep. 397; Tilford v. Miller, 84 Ind. 185.

[18] Tobey v. Barber, 5 Johns. 68, 4 Am. Dec. 326; Day v. Kinney, 131 Mass. 37; Susquehanna Fert. Co. v. White, 66 Md. 444, 7 Atl. 802.

[19] Henry v. Conley, 48 Ark. 271, 33 S. W. 181; Geib v. Reynolds. 35 Minn. 331, 28 N. W. 923; East River Bank v. Butterworth, 45 Barb. (N. Y.) 476.

[20] Hart v. Freeman, 42 Ala. 567; Mordecai v. Stewart, 36 Ga. 126; *In re* Weeks, 8 Ben. (U. S.) 269, 29 Fed. Cas. No. 17,349.

[21] Coburn v. Ware, 25 Me. 330; Robbins v. Cheek, 32 Ind. 328, 2 Am. Rep. 348; Price v. Cannon, 3 Mo. 453.

[22] Neg. Inst. Law, § 300 (171), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to payment for honor in general, see note 7 U. S. L. Ed. 132.

a notarial act of honor which may be appended to the protest or form an extension to it."[23]

"The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays."[24]

"Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference."[25]

"Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter."[26]

"Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment."[27]

"The payer for honor, on payment to the holder of the amount of the bill and the notarial expenses, incidental to its dishonor, is entitled to receive both the bill itself and the protest."[28]

§ 184. By cancellation and surrender. The second method by which an instrument may be discharged is by cancellation and surrender. Where the person who is entitled to receive payment delivers up the instrument which he holds against another with the intent and for the purpose of discharging the debt, this surrender operates as a release and discharge of the liability thereon in the absence of fraud or mistake. It is set out in the Negotiable Instruments Law that:

"A negotiable instrument is discharged by the intentional cancellation thereof by the holder."[29]

No consideration is necessary to support such a transaction after it has been executed.[30] Where the return or surrender of

[23] Neg. Inst. Law, § 301 (172), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[24] Neg. Inst. Law, § 302 (173), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[25] Neg. Inst. Law. § 303 (174), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[26] Neg. Inst. Law, § 304 (175), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[27] Neg. Inst Law, § 305 (176), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[28] Neg. Inst. Law, § 306 (177), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[29] Neg. Inst. Law, § 200 (119), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[30] Hale v. Rice, 124 Mass. 292; Booth v. Smith, 3 Woods (U. S.) 19, 2 Fed. Cas. No. 1,649; Ellsworth v. Fogg, 35 Vt. 355.

a note is induced by fraud,[31] the maker is not released from liability thereon; and where a note has been surrendered by mistake[32] upon the supposition that it was fully paid, the maker will remain liable for the balance still unpaid. The holder may waive his right to payment by cancellation. Cancellation of an instrument may be made by destroying it or by any other means by which the intention to cancel the instrument may be evidenced.[33]

"A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority."[34]

Cancellation may be made before maturity, but in order to be effective in such case against a *bona fide* holder it must carry notice to him of such cancellation upon its face.[35]

§ 185. By covenant not to sue. The maker or acceptor may be discharged from the payment of the instrument by a general covenant not to sue, and, of course, if the maker is discharged, the indorsers will also be discharged.[36]

Such a covenant is a discharge of the instrument as to these parties, but such a covenant will not discharge another who is jointly liable with the covenantee. If the covenant is given by one of two creditors it will not operate as a release or a discharge of the instrument.[37] A covenant not to sue for a limited time will not discharge the instrument as between the parties, but it does release the sureties.[38]

§ 186. By accord and satisfaction. In considering the question of accord and satisfaction a distinction should be made between an extinguishment and a satisfaction of a bill or note. This has been very clearly stated by Justice Story in the follow-

See *in re* Campbell, 7 Pa. St. 100, 47 Am. Dec. 503.

[31] Findley v. Cowles, 93 Ia. 389, 61 N. W. 998; Liesemer v. Burg, 106 Mich. 124, 63 N. W. 999; Reynolds v. French, 8 Vt. 85, 30 Am. Dec. 456.

[32] Mfg. Nat. Bank v. Thompson, 129 Mass. 438, 37 Am. Rep. 376; Blodgett v. Bickford, 30 Vt. 731, 73 Am. Dec. 334.

[33] Booth v. Smith, 3 Woods (U. S.) 19, 2 Fed. Cas. No. 1,649; Blade v. Noland, 12 Wend. (N. Y.) 173.

[34] Neg. Inst. Law, § 204 (123), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[35] Dod v. Edwards, 2 Car. & P. 602; Morley v. Culverwell, 7 Mees. & W. 174.

[36] Gordon v. Third Nat. Bank, 144 U. S. 97, 36 L. Ed. 360; Hall v. Capitol Bank of Macon, 71 Ga. 715; Scott v. Saffold, 37 Ga. 384; McLemore v. Powell, 12 Wheat. (U. S.) 554.

[37] Williams v. Scott, 83 Ind. 405.

[38] Hine v. Bailey, 16 Ia. 213, 35 Am. Dec. 214; Hamilton v. Prowty,

ing words: "Taking a security of a higher description, such as a bond or judgment, will extinguish the claim of the holder upon the note against the party giving the security; but it will not amount to a satisfaction thereof, so as to discharge the other parties upon the note."[39] Any person to whom the maker is liable on an instrument who makes an agreement with the maker not to sue has caused the instrument to be extinguished as to himself, but there is no satisfaction as to the other parties to the note.[40] Whatever the payee of the instrument receives from the maker in full satisfaction of his claim is a satisfaction as to all other parties who might have been held liable.[41] Where the debt or demand is liquidated, that is, where it is a sum certain, the payment of a less sum by the debtor and a receipt therefor by the creditor is not an accord and satisfaction of the debt, although the creditor agrees to accept it as such.[42] Such would not be the case, however, if the sum was in dispute or was an unliquidated sum.

§ 187. By substitution of another obligation. A bill of exchange or promissory note may be discharged by the substitution of a new obligation for the pre-existing one.[43] Some writers treat this subject under the head of novation. In these cases the extinguishment of the old debt is sufficient consideration for the new obligation. It is essential that the new obligation be such as may legally take place in order that it may extinguish or discharge the prior obligation. There may be a sufficient consideration and competent parties to the substitution obligation, but if the new obligation is one which cannot legally take place the prior instrument is not discharged.[44] It is permissible at any time before the contract of substitution is complete, for the parties to withdraw from the arrangement, but after such completion, none of them, without the consent of all the others, may withdraw from or rescind or in any way modify the new contract existing between them. The entire doctrine of substitution and the legal effect thereof depend upon the agreement

50 Wis. 592, 7 N. W. 659, 36 Am. Rep. 866; Okie v. Spencer, 2 Whart. 253, 30 Am. Dec. 251.

[39] Story on Promissory Notes, § 409; Tradesmen's Nat. Bank v. Looney, 99 Tenn. 278, 42 S. W. 149, 38 L. R. A. 837.

[40] Dean v. Newhall, 8 T. R. (Eng.) 168; Fowell v. Forrest, 2 Saund. (Eng.) 47n.

[41] Story on Promissory Notes, § 402.

[42] People v. Hamilton County, 56 Hun 459, 10 N. Y. S. 88; Hart v. Freeman, 42 Ala. 567; Mordecai v. Stewart, 36 Ga. 126.

[43] McDonnell v. Ala. Gold Life Ins. Co., 85 Ala. 401, 5 So. 120. Note 10 L. R. A. 369; Note 5 L. R. A. 414.

[44] Henry v. Nubert (Tenn.), 35 S. W. 44; Pope v. Vajen, 121 Ind. 317, 22 N. E. 308, 6 L. R. A. 688.

between the parties and is governed by the general laws of contracts.

§ 188. By alteration. The general rule as to whether or not the alteration of a bill or note will operate as a discharge of the instrument depends upon the effect produced upon the instrument by such alteration. If the alteration is immaterial it is held not to be a discharge, while, if it is a material alteration it is held to be a discharge of the instrument as to all the parties liable except as to the party who has himself made, authorized or assented to the alteration.

"Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor."[45]

"Any alteration which changes: (1) The date; (2) the sum payable either for principal or interest; (3) the time or place of payment; (4) the number or the relations of the parties; (5) the medium or currency in which payment is to be made; or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration." [46]

If the alteration is made before the delivery of the instrument it will not operate as a discharge of it. If a person after full knowledge of an alteration unconditionally promises to pay the instrument, it is considered a sufficient ratification and will not be construed as a discharge of the instrument to this particular party.[47] Where the alteration is made by a stranger to the instrument the rights of the parties are not affected and there is not sufficient ground for a discharge.[48]

§ 189. By the principal debtor becoming the holder in due course. The instrument is discharged if, when it matures, the acceptor or maker is or becomes the holder, since the right to

[45] Neg. Inst. Law, § 205 (124), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[46] Neg. Inst. Law, § 206 (125), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[47] Canon v. Grigsby, 116 Ill. 151, 5 N. E. 362; Bell v. Makin, 69 Ia. 408, 29 N. W. 331; Camden Bank v. Hall, 14 N. J. L. 583.

[48] Paterson v. Higgins, 5 Ill. App. 268; Piersol v. Grimes, 30 Ind. 129; White Sewing Machine Co. v. Dakin, 86 Mich. 581, 49 N. W. 583.

recover upon the instrument and the liability to pay the instrument are coincident in one and the same person. In order that payment or coincidence of right and liability should operate as a discharge, it is essential that the instrument should have matured. *"A negotiable instrument is discharged when the principal debtor becomes holder of the instrument at or after maturity in his own right."*[49] An acceptor or maker may acquire it before maturity, as purchaser, and may then further negotiate it.

§ 190. By operation of law. An instrument may be discharged by operation of law. If a judgment is obtained on a bill or note, the bill or note is thereby extinguished and merged in the judgment.[50] The judgment alone, without actual satisfaction, is no extinguishment as between the plaintiff and other parties not jointly liable with the original defendant, whether those parties be prior or subsequent to the defendant.[51] The issuing of execution against the person or property of one party to a negotiable instrument does not extinguish the plaintiff's remedy against the other parties.[52] The intermarriage of the maker of a note with the payee or holder will, unless otherwise provided by statute, discharge the maker from all liability thereon.[53] A discharge in bankruptcy, unless otherwise provided by statute, releases a bankrupt from all his provable debts, and therefore will discharge the bankrupt, on all bills accepted, or notes made by him, but will not discharge the other parties.[54]

§ 191. By renunciation by holder. The Negotiable Instruments Law provides that:

"The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor, made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon."[55]

[49] Neg. Inst. Law, § 200, subd. 5 (119), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[50] Claxton v. Swift, 2 Show. (Eng.) 441; Norris v. Aylett, 2 Campb. (Eng.) 329.

[51] Claxton v. Swift, 2 Show. (Eng.) 441.

[52] Porter v. Ingraham, 10 Mass. 88; Hayling v. Mulhall, 2 W. Bl. (Eng.) 1235.

[53] Curtis v. Brooks, 37 Barb. (N. Y.) 476.

[54] Dean v. Justice's Munic. Ct., 173 Mass. 453, 53 N. E. 893, 2 Am. B. R. 163.

[55] Neg. Inst. Law, § 203 (122), where all cases directly or indirectly bearing upon or citing the Law are grouped.

§ 192. When a person secondarily liable discharged. *"A person secondarily liable on the instrument is discharged:*

"By any act which discharges the instrument;

"By the intentional cancellation of his signature by the holder;

"By the discharge of a prior party;

"By a valid tender of payment made by a prior party;

"By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

"By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved."[56]

[56] Neg. Inst. Law, § 201 (120), where all cases directly or indirectly bearing upon or citing the Law are grouped.

CHAPTER XVIII.

CONFLICT OF LAWS, OR WHAT LAW GOVERNS.

§ 193. In general.
194. As to validity, interpretation and effect.
195. As to liability of maker, drawer and acceptor.
196. As to payment, interest and damages.
197. As to liability of indorser.
198. As to presentment, protest and notice.
199. Rule in federal courts.

§ 193. In general. Suppose a note is made in Pennsylvania, payable in Ohio, indorsed in Kentucky, and suit is brought upon it in Illinois; and suppose each of these states has a different law, which law will govern?

As a general rule the validity of a contract in the form of a negotiable instrument is to be determined by the law of the place where it is made;[1] and if valid where it is made, it is valid everywhere; but if invalid there it cannot be enforced in another state. If the instrument is made in one state to be performed in another it will be governed by the laws of the state in which it is to be performed.[2] The formalities essential to the validity of a contract and the interpretation thereof are to be governed by the laws of the country where it is made. Suppose a note is made in one jurisdiction and suit brought in another jurisdiction, what rule governs as to the bringing of the suit? The law of the latter state. A man cannot come from another state and sue on a note under the common law, but must sue according to the law in the place where he sues.

In some states in order for a note to be negotiable by the law merchant it must be payable at a bank. Now suppose some one gets such a note in another state where such is not the law and he endeavors to recover upon that note. In order to show the law of that state he must introduce the special statute, because the court would presume that the common law prevailed. In order to show that the formalities were different in that state from what they are in another state, that special statute would have to be produced and introduced in evidence in another state

[1] Harrison v. Edwards, 12 Vt. 648; Laurence v. Bassett, 5 Allen 140; Yeatman v. Cullen, 5 Blackf. 241.

[2] National Bank of America v. Indiana Banking Co., 114 Ill. 483, 2 N. E. 401; Shae etc. National Bank v. Wood, 142 Mass. 563, 8 N. E. 753. See note 61 L. R. A. 193. As to where taxable, see note 2 L. R. A. 801, and as to situs for purposes of administration, see note 24 L. R. A. 689.

to prove that, and if it is not introduced in evidence, then the common law would prevail.[3] In order to have the statute to govern, the statute must be produced in another state to make it supersede the common law there, for if a note is executed in one state and suit is brought on it in another state, in the absence of the statute of the first state being pleaded, the common law prevails.

If a bill on its face is an inland bill, the fact that it was actually drawn and delivered in a foreign state will not divest it of its inland character. The principle is that it is competent for the parties to provide, by agreement, that it shall be governed by the laws of any particular state or country.

§ 194. As to validity, interpretation and effect. The validity of a bill or note as regards requisites in form is determined by the law of the place of its issue.[4] As a negotiable instrument is not binding upon the parties until it is delivered, the place of contract is, therefore, the place where the instrument is delivered and not where it is written, dated and signed.[5] But in the absence of evidence to the contrary it will be presumed that the instrument was executed and delivered at the place where it bears date.[6] Where the instrument specifies a place of payment in a different state from that in which it was executed and delivered it is governed by the laws of the state in which it is made payable as to the requisites of form and execution.[7]

The question of the negotiability of a bill or note is to be determined by the law of the state where it is made payable. A note payable generally and negotiable in the state where executed will be governed by the law of that state in case suit is brought there on the note after it has been indorsed in another state where it is not negotiable. But it has been held that when a note is executed in one state and made payable in another that it will be governed for the purposes of negotiability by the law of the state where payable.

§ 195. As to liability of maker, drawer and acceptor. The obligation of the maker of a note is governed by the law of the place where the note is made or to be performed.[8] If a nego-

[3] Whidden v. Seelye, 40 Me. 247; Hunt v. Adams, 44 N. Y. 27; Francis v. Ocean Ins. Co., 6 Cow. (N. Y.) 404; Mason v. Dousay, 35 Ill. 424, 85 Am. Dec. 368.

[4] Austed v. Sutter, 30 Ill. 164; Ford v. Buckeye Ins. Co., 6 Bush. 133. See also note 3 U. S. L. Ed. 205.

[5] Freese v. Brownell, 35 N. J. L. 286; Bell v. Packard, 69 Me. 105.

[6] Lernig v. Ralston, 23 Pa. St. 139.

[7] Stricker v. Tinkham, 35 Ga. 176.

[8] Lawrence v. Bassett, 5 Allen 140; Wilson v. Lazier, 11 Gratt. 482.

tiable note is made in one state and payable there, and it is afterwards indorsed in another state, and by the law of the former, equitable defenses are let in, in favor of the maker, and by the latter excluded, what rule is to govern as to the holder? The answer is, the law of the place where the note was made; for there the maker undertook to pay; and the subsequent negotiation did not change his obligation or right.[9] The contract of the drawer of a bill of exchange is governed by the law of the place where the bill is drawn,[10] in regard to the rights of the payee and any subsequent holder, and not by the law of the place where accepted. This is so since the contract of the drawer is to pay the bill in the place where it is drawn, in case of the failure of the drawee to accept it, and not to pay it at the place where the drawee resides. The liability of an acceptor of a bill of exchange is governed by the law of the place of his acceptance,[11] as to the drawer, payee, and each subsequent holder, provided payment is to be made in the state where the acceptance was made. If payment is to be made by the acceptor in another state the laws of that state will govern as to these matters.

§ 196. As to payment, interest and damages. The obligation of the maker to pay and that of the acceptor to accept is governed by the law of the place of performance. Therefore the rate of interest will likewise be governed by the same law. And if the different parties to the instrument reside in different jurisdictions the law of the place where each is required to perform his obligation will govern.[12] In respect to interest, the maker of a note or the acceptor of a bill has a right to elect whether the legality of the rate shall be determined by the law of the place of payment, or of the place of execution. If a rate of interest is expressly provided for, which is usurious according to the law of the place of execution, and lawful according to the law of the place of payment, or vice versa, it will be lawful interest, and may be recovered anywhere, even in the place where the rate is declared to be usurious.[13] But if the provision of the law, which applies in the determination of the legality and rate of interest and damages, is not established by proper testimony, the law of the place where suit is brought will govern.[14]

The rate of interest payable as damages is determined by the

[9] Raymond v. Holmes, 11 Tex. 60.
[10] Bank of U. S. v. U. S., 2 How. 711, 11 L. Ed. 439; Raymond v. Holmes, 11 Tex. 55.
[11] Bissell v. Lewis, 4 Mich. 459.
[12] Schofield v. Day, 20 Johns. 102; Summers v. Mills, 21 Tex. 77.
[13] Richards v. Globe Bank, 12 Wis. 692; Potter v. Tallman, 35 Bash. 182.
[14] Wood v. Cerl, 4 Met. 203; Aymar v. Sheldon, 12 Wend. 221.

law of the place of performance; thus, in case of the acceptor or maker where the instrument is payable; and in case of the drawer and indorser, where the contract of indemnity is to be performed, that is, at the place of drawing and indorsing.

§ 197. As to liability of indorser. The liability of the indorser is said to be governed by the law of the place where the indorsement is made.[15] It is the new liability created by the indorsement in favor of the indorsee and subsequent indorsers that causes this law to govern. This law governs only as to the new liability created between the indorsee or subsequent indorsers and the prior indorsers. The rights of the transferee or indorsee against the original parties to the instrument are determined by the law of the place where the contract was made or is to be performed. Each successive holder of a commercial instrument has the same rights against the acceptor or maker, it matters not where the transfer was made.[16] These rights are determined by the *lex loci contractus vel solutionis.* The law of the forum determines always in whose name the suit may be brought, and to that extent governs the determination of the title of the indorsee.[17]

§ 198. As to presentment, protest and notice. The required formalities in respect to presentment are determined by the law of the place of acceptance or payment or, as sometimes called, the law of the place of performance.[18] This needs no explanation, as no other law could govern as to presentment except the law of the place of performance. The law of the place of payment governs as to the requirements in respect to protest.[19] If a bill is protested for non-acceptance the law of the state where the bill was presented for acceptance will govern, while if it is presented for non-payment the law of the place of payment will govern. The authorities are divided as to what law governs the requirements in respect to notice, but the weight of American decision is to the effect that the notice must conform to the law of the place where the contract of the maker or indorser is to be performed.[20]

§ 199. Rule in federal courts. In the courts of the United States, the decisions are in general in conformity with those of the state courts of last resort in respect to the liability of parties

[15] Lee v. Selleck, 33 N. Y. 615; Canton v. Barnes, 50 Ala. 403. See note 61 L. R. A. 212, 222.

[16] Robertson v. Burdekin, 1 Ross. Lead. Cas. 812.

[17] Walsh v. Dart, 12 Wis. 635.

[18] Todd v. Neal's Admrs., 49 Ala. 266.

[19] Raymond v. Holmes, 11 Tex. 54.

[20] Lee v. Selleck, 33 N. Y. 32; Williams v. Putnam, 14 N. H. 543.

to bills and notes, but not uniformly.[21] Where any controversy arises as to the liability of a party to a bill of exchange, promissory note, or other negotiable paper, in one of the federal courts of the United States, which is not determined by the positive words of a state statute, or by its meaning as construed by the state courts, the federal courts will apply to its solution the general principles of the law merchant, regardless of any local decision.[22]

[21] Moses v. Laurence Co. Nat. Bank, 149 U. S. 298, 13 S. Ct. 900, 37 L. Ed. 743; Burgess v. Seligman, 107 U. S. 20-33, 2 S. Ct. 10, 27 L. Ed. 359.

[22] Swift v. Tyson, 16 Pet. 1; see Hughes (W. T.) Prac. 1214, for full statement and bibliography; Brooklyn City, etc. Railroad Co. v. Nat. Bank, 102 U. S. 14, 26 L. Ed. 61.

CHAPTER XIX.

CHECKS.

§ 200. Check defined and distinguished from bill of exchange.
201. The formalities of a check.
202. Presentment of a check for payment.
203. Certification of check.
204. Forgery and alteration of check.
§ 205. Memorandum check.
206. Stale check.
207. Checkholder's right to sue the bank.
208. The depositor's right to draw on the bank.
209. Failure of bank to honor check.

§ 200. Check defined and distinguished from bill of exchange. The Negotiable Instruments Law defines a check as follows: *"A check is a bill of exchange drawn on a bank, payable on demand."* To this definition is added the following provision: *"Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check."*[1]

In other words a check is a commercial instrument which is in the form and nature of an inland bill of exchange, payable on demand.[2]

A check unlike a bill of exchange, is always drawn upon a bank or banker and is always payable on demand without days of grace.[3] It is not necessary that a check be presented for acceptance as in case of a bill of exchange.[4] However, if the holder requests it and the banker desires he may accept it.

A check is similar to a bill of exchange in that it is a negotiable instrument,[5] if negotiable in form, and is subject to the same rules regarding its transfer. A check may be transferred

[1] Neg. Inst. Law, § 321 (185), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[2] Exchange Bank v. Sutton Bank, 78 Md. 577, 28 Atl. 563, 23 L. R. A. 176; Minot v. Russ, 156 Mass. 458, 31 N. E. 489, 32 Am. St. Rep. 472, 16 L. R. A. 510. As to remedy of payee of a check against one who has taken it on indorsement of unauthorized agent, see note 13 L. R. A. (N. S.) 211. As to nature of checks, see note 7 L. R. A. 595 and as to what are checks, see note 7 L. R. A. 489.

[3] McDonald v. Stokey, 1 Mont. 388; *In re* Brown, 2 Story (U. S.) 502, 4 Fed. Cas. No. 1,985; Hawley v. Jette, 10 Oreg. 31, 45 Am. Rep. 129.

[4] *In re* Brown, 2 Story (U. S.) 502, 4 Fed. Cas. No. 1,985; Bowen v. Newell, 5 Sandf. (N. Y.) 326.

[5] Gate City Bldg. etc. Assn. v. Nat. Bank of Commerce, 126 Mo. 82, 28 S. W. 633, 47 Am. St. Rep. 633, 27 L. R. A. 401.

by indorsement and the indorser incurs the same liability as the indorser of a promissory note or bill of exchange. Like a bill, a check must contain an order; the order must be for the payment unconditionally and at all events; and it must be for a certain sum of money.[6] If an instrument is drawn in all respects as a check except that it orders payment at a day subsequent to its date, it is then a bill of exchange and not a check, being subject to all the rules governing bills of exchange.[7]

The drawer of a bill of exchange is discharged by default of the payee or holder in making due presentment to the drawee and in giving notice in case of dishonor, while in case of a check the drawer is not discharged by the failure of the payee or holder to take the above steps unless the delay was unreasonable.[8] A check is not due until demand is made for payment and the statute of limitations begins to run only after that time. A check may be accepted as payment.[8a]

§ 201. The formalities of a check. A check as to its form and formalities differs but little from that of a bill of exchange. All the various requisites of negotiable paper must be complied with in case of a check; there must be certainty as to amount, time and the person to whom payment shall be made and the payment must be in money.[9] In order that the check may be negotiable it must contain words of negotiability, but the absence of such words does not affect the character of the check other than that it is non-negotiable. Usually a check does not contain the address of the drawee, while in a bill of exchange it is almost invariably written in the lower left hand corner. The address of the bank is usually written or printed in large letters across the top, just below the date and place of execution.

§ 202. Presentment of a check for payment. The main purpose of presentment for payment being made in due time is to fix

[6] Grisson v. Commercial Nat. Bank, 87 Tenn. 350, 10 S. W. 774, 10 Am. St. Rep. 669, 3 L. R. A. 273.

[7] Whitehouse v. Whitehouse, 90 Me. 468, 38 Atl. 374, 60 Am. St. Rep. 278; Harrison v. Nicollet Nat. Bank, 41 Minn. 488, 43 N. W. 336, 16 Am. St. Rep. 718, 5 L. R. A. 746.

[8] Bull v. Bank, 123 U. S. 105, 31 L. Ed. 97; Stewart v. Smith, 17 Ohio St. 82; Serle v. Norton, 2 Moody & R. 401. As to release of indorser of check by delay in presenting it, see notes 22 L. R. A. 785 and 17 Am. St. Rep. 810. As to recovery by holder from drawer or indorser, see 17 Am. St. Rep. 807.

[8a] As to payment by check, see note in 7 L. R. A. 442, and as to effect of acceptance of check as payment, see note 9 L. R. A. 263.

[9] Ridgely Nat. Bank v. Patton, 109 Ill. 479; Industrial etc. Bank of Chi. v. Bowers, 165 Ill. 70, 46 N. E. 10, 56 Am. St. Rep. 228; State v. Warner, 60 Kan. 90, 55 Pac. 342.

the liability of the maker in case the bank fails before payment is made. The Negotiable Instruments Law provides that:

"A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay."[10]

This is simply the enactment of a general principle of law which existed prior to the passage of the act. Simply the want of due presentment of a check will not discharge the drawer, unless he has suffered some loss or injury thereby.[11] The only injury which would be sustained by the drawer in case presentment was not made within a reasonable time would be caused by the failure of the bank subsequent to the delivery and prior to the presentment of the check. Justice Story states the rule in the following language: "If a bank or banker still remains in good credit and is able to pay the check, the drawer will still remain liable to pay the same, notwithstanding many months may have elapsed since the date of the check, and before the presentment for payment and notice of the dishonor. So if the drawer at the date of the check or at the time of the presentment of it for payment had no funds in the bank or banker's hands, or if, after drawing the check and before its presentment for payment and dishonor, he had withdrawn his funds, the drawer would remain liable to pay the check, notwithstanding the lapse of time."[12]

Thus far we have only discussed the effect of delay in presentment as to the maker. Now we will consider its effect upon an indorser. We have already seen that delay in presentment does not discharge the liability of the drawer unless he has sustained a loss thereby, but we find that a different rule applies as to an indorser. As between the holder and an indorser the rule is that the check must be presented within the time prescribed by the law merchant, which is usually the following day, and if such presentment is not made within a reasonable time the indorser will be discharged from any liability.[13] The question

[10] Neg. Inst. Law, § 322 (186), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to necessity of demand, see note 7 L. R. A. 490 and as to the time of presenting a check, see note 13 L. R. A. 43. As to when check must be presented for payment, 17 Am. St. Rep. 807.

[11] Anderson v. Gill, 79 Md. 312, 29 Atl. 527, 47 Am. St. Rep. 402, 25 L. R. A. 200; Bull v. Bank, 123 U. S. 105; Little v. Bank, 2 Hill (N. Y.) 425; Henshaw v. Root, 60 Ind. 220; Stewart v. Smith, 17 Ohio St. 82; Alexander v. Burchfield, 7 Mon. & G. 1061. As to presentment and notice, see note 41 U. S. L. Ed. 855.

[12] Story on Promissory Notes, § 498.

[13] Miller v. Moseley, 26 La. Ann. 667; Wymore First Nat. Bank v. Miller, 43 Neb. 791, 62 N. W. 195;

that now arises is what constitutes a reasonable time. The law merchant has established the rule that where the parties all reside in the same place the holder must present it not later than the next day.[14] This is not, however, an absolute and iron-clad rule. What is a reasonable rule will depend upon circumstances and will in many cases depend upon the time, the mode, and the place[15] of receiving the check and upon the relation of the parties between whom the question arises.

§ 203. Certification of check. Certification of a check is an agreement whereby the bank agrees to pay the check at any future time when presented for payment. No particular form of words is necessary, but the usual method of certification is by stamping or writing upon the check the word "certified" and adding the date of the certification. After a check is once certified at the request of the holder, the drawer is released from all liability and all subsequent indorsers are discharged from their obligations.

The Negotiable Instruments Law provides:

"Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon."[16]

The bank, after the certification, will not be allowed to dispute the genuineness of the drawer's signature or to question the sufficiency of the funds in its hands to pay, as against a *bona fide* holder.[17] Neither will the bank be allowed to deny the validity of the check on the ground that no payee is named therein, because in such case it will be held payable to bearer.

The effect of certification is that the bank by certifying the check becomes the principal and only debtor, and the holder by taking a certificate of the check from the bank, instead of requiring payment, discharges the drawer, that is, *"Where a check*

Smith v. Jones, 20 Wend. (N. Y.) 192, 32 Am. Dec. 527. As to duty of holder to present, see note 17 Am. St. Rep. 807.

[14] Morris v. Eufaula Nat. Bank, 122 Ala. 580, 25 So. 499, 82 Am. St. Rep. 95; Hamilton v. Winona Salt etc. Co., 95 Mich. 436, 54 N. W. 903; Grange v. Reigh, 93 Wis. 552, 67 N. W. 1130.

[15] Grafton First Nat. Bank v. Buckhannon Bank, 80 Md. 475, 31 Atl. 302, 27 L. R. A. 332; Parker v. Reddick, 65 Miss. 242, 3 So. 575, 7 Am. St. Rep. 646; Wymore First Nat. Bank v. Miller, 43 Neb. 791, 62 N. W. 195.

[16] Neg. Inst. Law, § 324 (188), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to effect of certification, see note 12 L. R. A. 492, and as to effect on liability of drawer, see note 16 L. R. A. 510.

[17] Farmers & Mechanics Bank v. Butchers & Drovers Bank, 16 N. Y. 125; Espy v. Bank, 18 Wall. 621, 21 L. Ed. 947; Louisiana Nat. Bank v. Citizens Bank, 28 La. Ann. 189. As to liability of bank on certification of check, 19 U. S. L. Ed. 1008.

But see Marine Nat. Bank v. Nat. City Bank, 59 N. Y. 67.

is certified by the bank on which it is drawn the certification is equivalent to an acceptance."[18] The check then circulates as the representative of so much cash in bank, payable on demand to the holder.

We shall next notice who may certify a check. The board of directors as the governing body of the corporation or bank may delegate to other officers who have not implied power, the power to certify checks. The officers having implied power are the president, cashier and teller.[19] The assistant cashier has not this power and if he certifies a check, signing his name with his official title, "Asst. Cashier," without authority, it is generally held that it is not binding on the bank even in the hands of a *bona fide* holder.

A check cannot be certified before it is payable. Thus if a check is post-dated, the bank would not be bound by a certification made before the date on which the check is payable.[20] If the commercial character of the check has been destroyed in any manner the officer of the bank is not authorized to certify it. If the officer certifies a check of a person who has no funds there, the bank is not bound by it except as to a *bona fide* holder without notice.[21]

Below is a form of certification:

Certified Dec. 1, 1908.
THE EAGLE NATIONAL BANK.
John Green, Cash.

Detroit, Mich., December 1, 1908.

THE EAGLE NATIONAL BANK.

Pay to the order of Albert Carter $200.00

..... Two Hundred ..... Dollars

JOHN MARSH

§ 204. **Forgery and alteration.** The rules governing forgeries and alterations to commercial paper in general are applicable to checks.[21a] The bank is under a peculiar obligation, however, to know the signatures of its depositors on the checks drawn against it. But the bank is not presumed to have any peculiar knowledge

[18] Neg. Inst. Law, § 323, and cases cited. As to parol certification see note 7 L. R. A. 428.

[19] Merchants Bank v. State Bank, 10 Wall. 604, 19 L. Edi. 1008; Cooke v. State Nat. Bank, 52 N. Y. 96, 11 Am. Rep. 667.

But see Atlantic Bank v. Merchants Bank, 10 Gray 532.

[20] Clarke Nat. Bank v. Bank of Albion, 52 Barb. 592.

[21] Atlantic Bank v. Merchants Bank, 10 Gray 532; Cooke v. State Nat. Bank, 52 N. Y. 96, 11 Am. Rep. 667.

[21a] As to liability of person whose name is forged, see note 36 L. R. A. 539. As to rights of

of the genuineness of the contents of the checks. It is very common now that a check is filled out by a clerk and then signed by the maker. Therefore a bank is not charged with as great a degree of knowledge as to the genuineness of the contents of the checks as of the signature of the drawer. If the bank pays a check which has been altered in any material respect it may recover the money so improperly paid, since the holder of the check guarantees the genuineness of its contents. The general rule therefore is that the bank is strictly held to know the signature of its depositors and money paid on forged checks cannot be recovered.[22] But the bank is not held to so strict a knowledge of the contents of the check because they are not charged with knowledge of the handwriting in the body of the check, since it may or may not be the handwriting of the drawer. The bank is still liable to a payee or indorsee on whose indorsement alone the check is payable, although the money has been paid on a forged indorsement. But the bank is not supposed to know the signature of indorsers, and if any of them be forged the bank can recover back the money paid out on the check.

§ 205. **Memorandum check.** A memorandum check has been described to be a contract by which the drawer engages to pay the *bona fide* holder absolutely, and not upon a condition to pay upon presentment at maturity, and if due notice of the presentment and non-payment should be given.[23] The word "memorandum" written or printed upon the check describes the nature of contract with precision. In form and appearance a memorandum check does not differ from an ordinary check except that the words "memorandum," "mem" or "memo" are written upon the face of the check. Such a check is given by the drawer to the payee more in the nature of a memorandum of indebtedness than as payment.[24] In the case of a regular check demand for payment and a refusal on the part of the bank are necessary steps before the holder can maintain an action against the drawer, while in the case of a memorandum check the drawer

holder of forged check, see notes 17 Am. St. Rep. 890 and 94 Am. St. Rep. 645.

[22] First Nat. Bank of Danvers v. First Nat. Bank of Salem, 151 Mass. 280, 24 N. E. 44; First Nat. Bank v. Northwestern Nat. Bank, 152 Ill. 296, 38 N. E. 739, 26 L. R. A. 289; Germania Sav. Bank v. Boutell, 60 Minn. 189, 62 N. W. 327, 27 L. R. A. 635. As to drawee's duty to know signature, see note 27 L. R. A. 635. As to bank's liability to depositors for payment of forged check, see notes 2 L. R. A. 96, 7 L. R. A. 596, 849 and 12 L. R. A. 793. As to duty of depositor as to forged check, see notes 27 L. R. A. 426, 36 L. R. A. 539.

[23] Turnbull v. Osborne, 12 Abbott Prac. (N. S.) 200; Franklin Bank v. Freeman, 33 Mass. (16 Pick.) 535.

[24] United States v. Isham, 17 Wall. 496, 21 L. Ed. 728.

may be sued the same as upon a promissory note.[25] If such a check is presented for payment, and the drawer has sufficient funds to meet it, the bank must honor it like any ordinary check. If the agreement between the drawer and payee is that it shall not be presented for payment, any remedy of the drawer for the breach of such agreement is solely against the payee.[26] If a memorandum check has been indorsed to a *bona fide* holder for value the check then presents all the features of other negotiable instruments.

§ 206. Stale check. A stale check is one where there has been unreasonable delay by the holder in presenting for payment. It is always unsafe to delay the presentment for the double reason that the drawer or indorser may be discharged by loss occasioned by the failure of the bank and because a stale check is looked upon with suspicion since custom has established the fact that checks are not supposed to remain long in circulation. Some jurisdictions hold that if the bank pays a stale check which for any reason may be invalid, the bank will be held to have done so at its peril, as the fact that the check was stale was sufficient to put the bank upon inquiry.[27] It has also been held that a purchaser is put upon notice as to the genuineness of a check by the fact that it is stale. There is no absolute rule which may be laid down in determining when a check is stale.[28]

§ 207. Checkholder's right to sue the bank. Let us first consider when the holder of a certified check may sue the bank and then consider when the holder of an uncertified check may sue the bank. The great weight of authority is that where the bank has certified a check any holder of the check may sue the bank to compel payment.[29] The certification creates a new and binding obligation on the part of the bank. Delay in presenting a certified check does not discharge the bank from this obligation. It has been said that the obligation of the bank after certifying a check is simply and unconditionally to pay upon demand, and in all such cases the demand may be made whenever it suits the convenience of the party entitled to the stipulated payment. When the business of a bank is properly conducted, it is not possible that it can sustain any loss or prejudice from this interpretation of the contract which it makes in certifying a

[25] Van Schaack, Bank Checks, 184.

[26] Morse, Banks, 313.

[27] Lancaster Bank v. Woodward, 18 Pa. St. 357.

[28] Ames v. Merriam, 98 Mass. 294; Estes v. Shoe Co., 59 Minn. 504, 61 N. W. 674; First Nat. Bank v. Needham, 29 Ia. 249; Bull v. Bank, 123 U. S. 105. As to when a check is considered stale, see note 13 L. R. A. 44.

[29] Willits v. Bank, 2 Duer (N. Y.) 121; Merchants Nat. Bank v. State Nat. Bank, 10 Wall. 604; Nat. Commercial Bank v. Miller, 77 Ala. 168; Meads v. Merchants Bank, 25 N. Y. 143, 82 Am. Dec. 331. As to

check; and it is only where delay may be prejudicial that the want of due diligence may be legally imputed and operates as a bar to a claim which the holder could otherwise maintain against the bank.[30] The effect of a certification as to the right of action which may be maintained by the holder simply shifts from the drawer and indorsers to the bank. His right to sue is transferred from a right against the drawer to a right against the bank.

The rule as to the right of a holder of an uncertified check to sue the bank is denied by the great weight of authority. To enable the holder of such a check to successfully maintain an action against the bank it would be necessary for the check to operate as an assignment of the drawer's funds. This, it is plain, an uncertified check does not do, since it is but an order to pay and not an absolute assignment of anything.

"A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check."[31] It would seem on principle that there is no assignment to the holder nor privity of contract between the bank and the holder of an uncertified or unaccepted check, either at law or in equity. The holder's remedy is against the drawer, and to the drawer only is the bank liable if its refusal to pay was a breach of its contract. A check is clearly not an assignment of money in the hands of a banker. The banker is bound by his contract with his customer to honor the check, when he has sufficient assets in his hands. If he does not fulfill his contract, he is liable to an action by the drawer.[32]

§ 208. The depositor's right to draw on the bank. The implied contract between the banker and the depositor is that the banker will honor his checks to the amount of his deposits. Therefore it is a plain proposition that only the depositor or his duly authorized agent can draw against the deposits. The depositor is the only person entitled to draw on the bank any check whose signature does not correspond to the name on its books. In case the deposit is made by a partnership the check must be signed by the partnership name and may be issued by any one of the active partners. Where the check is not signed by the

liability of bank on certification of check, see note 19 U. S. L. Ed. 1008.

[30] Andrews v. German Nat. Bank, 9 Heisk. (Tenn.) 211, 24 Am. Rep. 300; Robson v. Bennett, 2 Taunt. 388, 11 Rev. Rep. 614.

[31] Neg. Inst. Law, § 325 (189), where all cases directly or indirectly bearing upon or citing the Law are grouped. As to a check as an equitable assignment, see notes in 7 L. R. A. 596, 9 L. R. A. 109; and as to checkholder's right to sue bank for refusal to pay, see note 41 U. S. L. Ed. 207.

[32] Hopkinson v. Foster, L. R. 19 Eq. 74. As to liability of bank upon check drawn upon it, see note 19 U. S. L. Ed. 897.

partnership name, but instead all the partners sign their individual names the bank may honor the check. Where several persons not a partnership make a joint deposit it is necessary that all their names appear on the check unless they make the deposit a joint and several credit, in which case any one of them may draw on the deposit.

As to corporations it is incumbent upon the bank to ascertain from the charter or by-laws of the corporations what officers are authorized to draw on the deposits of the corporation. But if a check is drawn by an unauthorized officer and the corporation accepts the proceeds of the check, it is estopped to set up the officer's want of authority. Where a number of trustees deposit trust funds the general rule is that all their names must be signed to the check in drawing on the bank, but a court of equity may sanction the drawing of a check by a less number than all.

An agent who has put to his private account funds of an undisclosed principal may recover damages from the bank for refusal to honor his check upon them, although he had improperly obtained them.

§ 209. Failure of bank to honor check. Where the bank possesses funds of a depositor it is bound to honor his checks to the amount of his deposits. If a check is properly drawn and presented for payment and the bank fails to honor it when there are sufficient funds, the depositor may maintain an action against the bank not only for a breach of contract, but also for a tort; in the latter case he would be entitled to recover damages for injury to his credit or any other injury that he might have suffered.[33]

The drawer must have sufficient funds in bank to meet the check in full to entitle him to maintain an action against the bank for a failure to honor his check, because the bank cannot be required to make a part payment.[34] After the deposit is made the bank is allowed a reasonable time in which to enter the credit upon its books. But if a reasonable time has elapsed between the deposit and the presentment of the check the bank will be liable although the credit was not entered because it is the duty of the bank to properly keep its books and to properly conduct its business.

[33] Mt. Sterling Nat. Bank v. Greene, 99 Ky. 262, 35 S. W. 911, 32 L. R. A. 568; Svendsen v. State Bank, 64 Minn. 40, 65 N. W. 1086, 31 L. R. A. 552. As to liability of bank for refusal to pay, see note 15 L. R. A. 134. As to right to stop payment of check, see note 30 L. R. A. 845.

[34] Fonner v. Smith, 3 Neb. 107, 47 N. W. 632, 11 L. R. A. 528.

CHAPTER XX.

OTHER KINDS OF COMMERCIAL PAPER.

§ 210. In general.
211. Bill of lading.
212. Certificate of deposit.
213. Certificate of stock.
214. Coupon bonds.
§ 215. Draft.
216. Due bill.
217. Letters of credit.
218. Paper money.
219. Warehouse receipt.

§ 210. In general. Among the most common species of commercial paper other than bills of exchange, promissory notes and bank checks are bills of lading, certificates of deposit, certificates of stock, coupon bonds, drafts, due bills, letters of credit, paper money and warehouse receipts.[1a]

§ 211. Bill of lading. A bill of lading is an instrument issued by a common carrier to any person desiring to have goods transferred from one place to another. It contains a receipt acknowledging the receipt of the goods and also an agreement to carry them to a certain destination to a party designated in the instrument as the consignee.[1] It should contain a description of the quantity and condition of the goods received, the marks on the same, the names of the consignor and consignee, the place of shipment, the place of discharge, and the price of the freight.[2]

The bill of lading is generally issued in sets of three and sometimes in sets of four, yet there need not be more than one copy as the number is immaterial.[3] When issued in sets of three, one is retained by the common carrier, a second by the consignor, and a third is to be sent to the consignee. A bill of lading in the strict commercial sense of the term is not negotiable in like manner as bills of exchange and promissory notes.[4] Yet they are assignable by indorsement and pass from hand to hand as other negotiable instruments. It differs from the promissory note, bill of exchange and check, in that it calls for a delivery of goods instead of the payment of money. It is held that goods shipped

[1a] As to what instruments are negotiable, see notes 7 L. R. A. 537 and 8 L. R. A. 393.

[1] Knox v. The Nevella, Crabbe 534; 1 Smith Lead. Cas. 879; Haille v. Smith, 1 Bos. & Pul. 564; Howard v. Shepard, 19 L. J. C. B. 248; Sanders v. Vanzeller, 12 L. J. Exch. 497. As to effect of attaching draft to bill of lading upon passing of title to the property, see note 22 L. R. A. 423.

[2] Gage v. Morse, 12 Allen 410; Germania Fire Ins. Co. v. Memphis etc. R. R., 72 N. Y. 90; Belger v. Dinsmore, 51 N. Y. 166.

[3] Dows v. Perrin, 16 N. Y. 325.

[4] Gurney v. Behrend, 3 E. & B. 622, 22 L. J. Q. B. 265; Blanchard v. Page, 8 Gray 297; Davenport

by a bill of lading drawn to the order of the shipper may be transferred by delivery of the bill without indorsement.

The character of bills of lading is now regulated in many jurisdictions by statute, and in some, bills of lading are declared to be negotiable like other commercial paper.

If the consignee has received the bill of lading of the goods, deliverable to him or his assigns, or indorsed to him or his assigns, and indorsed it to a *bona fide* third party, then the vendor's right to stop the goods *in transitu* and hold them as security for the purchase money is defeated, and the assignee of the bill acquires as perfect a title to the goods, although they have not reached the buyer's hands, as if they had actually passed through his hands and been delivered bodily to him.[5]

Sometimes for the protection of the vendor the bill of lading for the goods shipped is sent to the vendee, attached to a bill of exchange for the purchase money; the purpose of this is to make the passing of title to the goods contingent upon the honoring of the bill of exchange.[6]

§ 212. **Certificate of deposit.** A certificate of deposit is an instrument in the form of a receipt given by a banker for a certain sum of money. When the time of payment is specified and the words of negotiability are used it is in effect, then, a promissory note. Otherwise it only circulates as a negotiable instrument by assignment.

In general negotiability of such an instrument depends upon its wording and is controlled by the same rules that govern promissory notes.[7]

The certificate of deposit is used instead of drawing a check on the fund deposited, whenever the depositor desires a continuing security, drawing interest, and payable on demand or at some time in the future.

A certificate of deposit is *prima facie* a conditional payment only if transferred in payment of a debt.

§ 213. **Certificate of stock.** A certificate of stock is a simple certification that a certain person is the owner of so many shares

Nat. Bank v. Homeyer, 45 Mo. 145; National Bank v. Merchants Nat. Bank, 91 U. S. 98, 23 L. Ed. 208; Barnard v. Campbell, 55 N. Y. 462.

[5] Lickbarrow v. Mason, 1 Smith Lead. Cas. 895; Dows v. Greene, 24 N. Y. 641; Becker v. Hallgarten, 86 N. Y. 167; Newhall v. Cent. P. R. R. Co., 51 Cal. 345; Gurney v. Behrend, 2 El. & B. 622; Emery v. Irving Nat. Bank, 25 Ohio St. 360.

[6] Shepard v. Harrison, L. R. 4 Q. B. 197, 5 H. L. 116; Indiana etc. Bank v. Colgate, 4 Daly 41; Marine Bank v. Wright, 48 N. Y. 1.

[7] Huse v. Hamblin, 29 Ia. 501; Rindskoff v. Barrett, 11 Ia. 172; Ford v. Mitchell, 15 Wis. 304; Lindsay v. McClelland, 18 Wis. 481; London (S. C.) v. Hagerstown S. Bank, 12 Casey 498; Easton v. Hyde, 13 Minn. 90.

of stock of the company mentioned. It is signed and sealed by the president and secretary of the company. It is not the stock itself but only evidence of the stock, and not money, therefore it is not as fully negotiable as a promissory note or check. The certificate is passed from hand to hand by assignment of the certificate and by the rules of most corporations there must be an assignment on the books of the company in order that the person holding the certificate may be entitled to all the rights of an owner of a certificate of stock in the first instance.

The general rule is that the purchaser of the certificates of stock gets no better title than his vendor had; and if stock which is payable to bearer or indorsed in blank is stolen or found, and unlawfully transferred to an innocent purchaser for value, the real owner may nevertheless recover it.[8]

§ 214. Coupon bonds. A coupon bond is a primary obligation, in the nature of a promissory note, promising to pay a sum of money on a day certain in the future, to which are attached certain other obligations called coupons, or interest certificates, and of which there are usually as many as there are payments to be made. In their form they usually resemble promissory notes more than they do bank notes, checks or bills of exchange. They are fully negotiable if they contain words of negotiability. Each coupon is in itself a separate instrument containing a distinct and independent promise to pay the sum named. The holder of a coupon bond does not necessarily have to own the bond to recover on the coupon and he can sue on the coupon without producing the bonds to which they were attached.[9]

They are issued by the federal and state governments, by municipal and other public corporations; and by all sorts of private corporations, such as railroads, canal companies and the like.

The Negotiable Instruments Law in some states has the following provision:

"The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money,

[8] Bereich v. Marye, 9 Nev. 312; Burton's Appeal, 93 Pa. St. 214; Howard v. Howard, 7 Wall. 415, 19 L. Ed. 122.

[9] Clark v. Iowa City, 20 Wall. 584, 22 L. Ed. 427; Thompson v. Lee County, 3 Wall. 327; City v. Lamson, 9 Wall. 477, 19 L. Ed. 725; Clarke v. Janesville, 10 Wis. 136; Rose v. City of Bridgeport, 17 Conn. 243; R. R. v. Cleway, 13 Ind. 161; Commonwealth v. Industrial Assn., 98 Mass. 12; Spooner v. Holmes, 102 Mass. 503; Arents v. Commonwealth, 18 Gratt. 776; Com'rs of Knox Co. v. Aspinwall, 21 How. 589; Town v. Culver, 19 Wall. 84; Beaver Co. v. Armstrong, 44 Pa. St. 63; Maddox v. Graham, 2 Metc. (Ky.) 56; Brainard v. N. Y. & H. R. R. Co., 25 N. Y. 496; Evertsen v. Nat. Bank, 11 N. Y. S. C. (4 Hun) 694; Langston v. S. C. R. R. Co., 2 S. C. 249; Nat.

payable to bearer) heretofore or hereafter issued in and payable in this state, but not registered in pursuance of any state law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.''[9a]

§ 215. **Draft by bank.** It is customary in the transaction of banking business for one bank to issue drafts upon a bank located in another state. It has been decided that such drafts are checks and the parties thereto are subject to the same liabilities and possess the same rights as though such drafts were drawn upon a particular bank or banker by an individual.[9b]

§ 216. **Due bill.** A due bill is an instrument whereby one person acknowledges his indebtedness to some other party in form as follows: "Due B two hundred dollars, payable to his order, (signed A)." Thus it is in substance a promissory note. If the bill contains words importing a promise to pay and rendering the instrument negotiable it is generally treated as a promissory note.[10]

Some jurisdictions have by statutory enactment extended the law of bills of exchange and promissory notes to all instruments in writing whereby any person acknowledges any sum of money to be due to any other person.

§ 217. **Letters of credit.** Letters of credit, sometimes called bills of credit, are open instruments of request from some person, usually a merchant or banker, to any other person to advance money or give credit to some third party and promising that he will repay the same to the party advancing it or will accept bills drawn upon himself for a like amount. If addressed to some particular person, that person alone can advance money upon them and then recover of the writer,[11] but if they are addressed to

Ex. Bank v. Hartford R. R. Co., 8 R. I. 375. As to negotiability of coupon bonds, see note 1 L. R. A. 299.

[9a] Neg. Inst. Law, § 332 (New York); Laws of N. Y. 1871, ch. 81; Laws of N. Y. 1873, ch. 595.

[9b] As to nature of bank draft, see note 23 L. R. A. 173.

[10] Sackett v. Spencer, 29 Barb. 180; Russell v. Whipple, 2 Conn. 536; Carver v. Hayes, 47 Me. 257; Hussey v. Winslow, 59 Me. 170; Franklin v. March, 6 N. H. 364; Cummings v. Freeman, 2 Humph. 144; Huych v. Meador, 24 Ark. 192; Marrigan v. Page, 4 Humph. 247.

[11] Robins v. Bingham, 4 Johns. 476; Walsh v. Bailie, 10 Johns. 180; Taylor v. Wilmore, 10 Ohio 490. As to what a letter of credit is, see note 7 L. R. A. 209.

any person in general then anybody can advance money upon them and recover of the writer. Bills of credit are usually issued by banks or merchants.

These letters are often used by travelers and agents to obviate the risk and burden of carrying about money. In such cases a deposit is made by the bearer of the letter with the banker as an indemnity.

§ 218. **Paper money.** Paper money in its most common form is that of United States treasury notes, United States silver and gold certificates and bank notes. United States treasury notes differ very little from promissory notes payable on demand except as to the texture of the paper on which they are printed. The purpose of the quality of the paper used is to prevent counterfeiting. Treasury notes differ from other paper money in that they have been made a legal tender by the federal government. Gold and silver certificates circulate as money. They specify on their face that there has been placed or deposited in the treasury of the United States a sum of gold or silver as indicated by the certificate which is payable to the bearer on demand. These certificates are not a legal tender. Bank notes are the promissory notes of an incorporated bank and are intended to circulate as money. They are not legal tender, but may be tendered in payment of debts the same as other money, if not objected to. They are payable to bearer on demand and are negotiable. It has been held that a *bona fide* holder can compel payment to him although they are proven to have been stolen from the rightful owner. The mere possession of the note is *prima facie* evidence of *bona fide* ownership and this presumption is so strong that it can not be overturned by showing the holder was negligent in taking the notes without inquiry. All that it is necessary to show in this connection is that they were obtained in the usual course of business.

The payment of bank notes is secured by the deposit of government bonds, and the banks issuing them being so closely supervised by the government, they circulate without regard to the banks which gave them life. The financial standing of the national bank note differs in nothing from the treasury note, except that the treasury note is a legal tender and the bank note is not.

§ 219. **Warehouse receipt.** A warehouse receipt is a receipt showing the acceptance of grain or other goods which are to be delivered to the bearer. As to grain, upon its receipt by the warehouseman or elevator company an instrument is issued which sets out that a certain quantity of grain and kind has been received and a promise is made to deliver it to the order of the depositor. Such warehouse receipts are taken by the depositor or the exchanges of the cities as the representative of the grain itself and

when the latter is sold the receipts are transferred by indorsement and delivery, or by delivery alone. In such manner the title to the grain will be transferred just as if the grain itself had been delivered.

These receipts represent goods and not money and so are not negotiable as promissory notes and bills of exchange.[12]

[12] Second Nat. Bank v. Wallridge, 19 Ohio St. 419; Burton v. Curyea, 40 Ill. 320; Canadian Bank v. McCrea, 40 Ill. 281; Spangler v. Butterfiest, 6 Colo. 356; Solomon v. Bushnell, 11 Oreg. 272, 50 Am. Rep. 475; Durr v. Hervey, 44 Ark. 301, 51 Am. Rep. 594; Louisville Bank v. Boyce, 78 Ky. 42; Griswold v. Haven, 25 N. Y. 595.

See also, Allen v. Maury, 66 Ala. 10; Fourth Nat. Bank v. St. Louis Compress Co., 11 Mo. App. 333.

CHAPTER XXI.

SURETYSHIP AND GUARANTY.

§ 220. Terms defined and distinguished.
221. Consideration as to a guaranty.
222. Guaranty as affected by statute of frauds.
223. Negotiability of guaranties.
224. Notice to guarantor of default of principal when demand is made.
§ 225. Liability of concealed sureties on accommodation paper.
226. Remedies of guarantors.
227. Discharge of guarantors and sureties.

§ 220. Terms defined and distinguished. Guaranty is an undertaking by one person that another shall perform his contract or fulfill his obligation and in case he does not do so the guarantor promises to do it for him. A guarantor of a bill or note is one who engages that the note shall be paid. A contract of suretyship is a contract by which the surety becomes bound as the principal or original debtor is bound. It is a primary obligation, and the creditor is not required to proceed first against the principal before he can recover from the surety.

The surety is bound with his principal as an original promisor, that is, he is a debtor from the beginning and must see that the debt is paid and is held ordinarily to know every default of his principal, and cannot protect himself by the mere indulgence of the creditor, nor by want of notice of the default of the principal, however such indulgence or want of notice may, in fact, injure him.[1] Being bound with the principal his obligation to pay is equally absolute. On the other hand, the contract of a guarantor is his own separate contract; it is in the nature of a warranty by him that the thing guaranteed to be done by the principal shall be done, and is not merely an engagement jointly with the principal to do the thing.[2] A guarantor, not being a joint contractor with his principal, is not bound to do what the principal has contracted to do, like a surety, but only to answer for the consequences of the default of the principal.

The guarantor has to answer for the consequences of his prin-

[1] Millan v. Bull's Head Bank, 32 Ind. 11. See note 13 L. R. A. (N. S.) 204. As to signing by surety for surety, see note 21 L. R. A. 247.

[2] La Rose et al. v. Logansport Bank, 102 Ind. 332; Reigert v. White, 52 Pa. St. 438; Harris v. Newell, 42 Wis. 687.

cipal's default. A surety is an insurer of the debt. A guarantor is an insurer of the solvency of the debtor. A surety may be sued as promisor, but a guarantor cannot. The surety and the principal being equally bound may be joined as defendants in one suit or the surety may be sued alone, without any effort having been made to recover the debt from the principal; but a guarantor, being bound by a separate contract, must be sued separately.

§ 221. Consideration as to guaranties. The general doctrine upon this subject is that a consideration is necessary to support a guaranty.[3] In some instances the consideration of the note or bill is of itself sufficient, while in other cases an independent consideration is required. A guaranty of the payment of a negotiable promissory note, written by a third person upon the note before its delivery, requires no other consideration to support it, and need express none other than the consideration which the note upon its face implies to have passed between the original parties.[4] In such a case the credit is given to both, and not to one alone, although only one may derive any substantial benefit from the transaction. But a guaranty written upon a promissory note, after the note has been delivered and taken effect as a contract, requires a distinct consideration to support it, and if such a guaranty does not express any consideration, it is void, where the Statute of Frauds of the state requires the consideration to be expressed in writing. There seems to be an exception to this requirement, as in the case where the guaranty was agreed upon at the time of making the principal contract, and it was merely committed to writing afterwards. If the consideration is a continuous thing, running along at the time both of the principal contract and of the guaranty, it is considered a contemporaneous guaranty and does not require a distinct consideration.

§ 222. Guaranty as affected by statute of frauds. Guaranty is an undertaking to answer for the debt or default of another within the meaning of the Statute of Frauds, and must accordingly be in writing and signed by the party to be bound or by his lawful agent.

Since a guaranty is a promise or an undertaking by one person to answer for the debt, default or miscarriage of another person the question arises as to whether or not a writing setting out the consideration and signed by the person to be charged thereby is necessary. The courts in this country are agreed that the signature of the party to be charged must be obtained, but the de-

[3] Davis v. Wells, 104 U. S. 159, 26 L. Ed. 686; Rause v. Glissman, 29 Ill. App. 321.

[4] Moses v. Lawrence Co. Bank, 149 U. S. 298, 37 L. Ed. 743.

cisions are at a variance as to whether the consideration for the guaranty should also be set out in full.[5] If the statute only requires the promise to be in writing it seems that the consideration need not be in writing.[6] This is established upon the principle that the promise is not the entire agreement and therefore does not include the consideration. In order that the agreement may be controlled by the statute it must contain a promise to answer for the debt of another both in form and in fact.[7] It has been held that if the transaction be nothing more than an indirect way of guaranteeing the payment of one's transfers to his creditor, such as giving the note of another which is payable to himself with a guaranty that this third person's note will be paid, the guaranty is substantially that the guarantor's original debt will be paid by the collection of this third person's note; and for this reason the guaranty need not be in writing.

§ 223. Negotiability of guaranties. Whether a guaranty on a negotiable bill or note is itself negotiable is a question concerning which there is much confusion. It is held by some cases that the guaranty does not fall within the rule of negotiability, and can inure only to the benefit of the person to whom it was given. On the other hand, it is held in some jurisdictions that the guaranty passes with the instrument, and inures to the benefit of the holder. Some of those cases, holding that it passes with the instrument as being negotiable, treat it in the nature of an indorsement, while still others hold that it is not negotiable on the ground that it is a contract of the common law and not of the law merchant, and consequently is incapable of negotiability by any intention of the guaranty. Authorities, however, are not wanting which decline to take this view where the guaranty is by a third person, and not by the holder of the instrument, and, while not readily allowing negotiability to a guaranty, allowing it to the guaranty if the language of the guaranty does not restrain it. The better doctrine seems to be to hold the guaranty as non-negotiable, since it is a common law contract and is not properly considered an indorsement. It may be transferred with the indorsement by assignment and the assignee can then maintain an action upon the guaranty in his own name under statutes of most of the states.

§ 224. Notice to guarantor of default of principal when demand is made. The guarantor's contract is more rigid than

[5] Nichols v. Allen, 23 Minn. 543; Rigbey v. Norwood, 34 Ala. 129; Reed v. Evans, 17 Ohio 128; Gilligan v. Boardman, 29 Me. 79.

[6] Violett v. Patten, 5 Cranch 142, 3 L. Ed. 61.

[7] Birkmyr v. Darnell, 3 Ld. Raymond 1085, 6 Mod. 248, 1 Salk. 27.

that of an indorser and he is bound to pay the amount upon a presentment made and notice given to him of dishonor, within a reasonable time.[8] And in the event of a failure to make presentment and give notice within such reasonable time, he is not absolutely discharged from all liability, but only to the extent that he may have sustained loss or injury by the delay. The same person may be a guarantor and also an indorser of a note; and in such case the failure to give him due notice of demand and nonpayment will discharge him as indorser, but he will still be bound as a guarantor. In case the principal is insolvent at and before maturity of the bill or note, the guarantor is liable, because it is presumed that the guarantor has suffered nothing in that case from the failure to give notice of the default.[9]

§ 225. Liability of concealed sureties on accommodation paper. If a person who signs an instrument as an accommodation for another party and writes the word *surety* after his signature, he must be treated as such by all subsequent holders whether he be the drawer or acceptor of a bill of exchange, the maker of a promissory note or the indorser of either.[10] But in case the instrument does not disclose his real character as a surety the question then arises, can such relation be shown and the liability fixed in accordance therewith. The English equitable rule is that the character of a concealed surety who appears on the instrument as a regular acceptor or indorser may be shown by parol evidence as against all parties except a *bona fide* holder without notice.[11] However, the great weight of judicial opinion denies the admissibility of parol evidence to prove the party's real character where it would materially change the party's liability to the paper and follows the English common law rule, which permits all subsequent holders to a bill or note to treat all the prior parties according to their ostensible character.[12] But if the concealed surety is a co-maker or drawer and proof of his character would not reverse the evident intention of the parties as to his relation to the paper, the general trend of judicial opinion in this country is to admit such proof.[13]

§ 226. Remedies of guarantors. The remedies which are available to guarantors are of two classes. The first and most

[8] Clay v. Edgerton, 19 Ohio St. 553; Montgomery v. Kellog, 43 Miss. 486.

[9] Wolfe v. Brown, 5 Ohio St. 304.

[10] Hunt v. Adams, 5 Mass. 358; Robison v. Lyle, 10 Barb. 512; Sayles v. Sims, 73 N. Y. 552.

[11] Erwin v. Lancaster, 6 Best & S. Q. B. 572; Hollier v. Eyre, 9 Cl. & F., 1, 45; Strong v. Foster, 17 C. B. 201.

[12] Farmers etc. Bank v. Rathbone, 26 Vt. 19; Stephens v. Monongahela, 88 Pa. St. 157.

[13] Hubbard v. Gurney, 64 N. Y.

common is that by which the guarantor pays the debt and recovers of the principal and all other parties whom the holder may have held liable.[14] But he can only recover a sum equal to the amount he was compelled to pay with interest on the same.[15] The second method which he may pursue is to file a bill in equity making as parties thereto the creditor and the principal parties, to enjoin proceedings against himself until the resources of the principal have first been exhausted.[16] The creditor may demand the guarantor to indemnify him against loss.[17] This is a very unusual proceeding and the interests of the guarantor can always be fully protected by the former proceeding.

§ 227. Discharge of guarantors and sureties. Guarantors and sureties may be discharged in any one of the following three ways: (1) By a discharge of the principal, as anything which discharges the principal will discharge the guarantor or surety;[18] (2) by the signature having been obtained by fraud;[19] and (3) lastly by the surrender to the principal or other party to the paper of any collateral securities.[20] Any alteration of the written instrument which will discharge the principal will also discharge the surety. The surety may be released by an alteration which does not release the principal debtor. In the case where a creditor receives from the principal debtor payment of interest in advance on a past due note an agreement to give time is necessarily implied and the creditor thereby debars himself in the meantime of suing on the note, and the surety is therefore discharged, unless the creditor can show mistake, or possibly an agreement that the right of suit should not be suspended.[21] It is held by the weight of authority that the plea of fraud or misrepresentation will not avail to discharge a guarantor or surety as against a *bona fide* holder. The surety or guarantor is discharged if the holder surrenders any of the collateral securities to the principal or any other party to the paper;[22] if the holder enters into a binding contract for the extension of time they are discharged.[23] Un-

460; Sayles v. Sims, 43 N. Y. 552; Stillwell v. Aaron, 69 Mo. 539.

[14] Humphrey v. Hitt, 6 Gratt. 524; Edgerly v. Emerson, 23 N. H. 555.

[15] Petre v. Duncombe, 20 L. J. Q. B. 242.

[16] Humphrey v. Hitt, 6 Gratt. 524.

[17] Humphrey v. Hitt, 6 Gratt. 524.

[18] Broadway Sav. Bank. v. Schmucker, 7 Mo. App. 171; Gloucester Bank v. Worcester, 10 Pick. 528.

[19] Melick v. First Nat. Bank, 52 Ia. 94.

[20] Dillon v. Russell, 5 Neb. 484; Kirkpatrick v. Hawke, 80 Ill. 122.

[21] McLemore v. Powell, 12 Wheat. 554; Galbraith v. Fullerton, 53 Ill. 126; Muirhead v. Kirkpatrick, 9 Harris 237.

[22] Muirhead v. Kirkpatrick, *supra*.

[23] Fellows v. Prentiss, 3 Denio

der the principle of subrogation, the guarantor or surety has a vested interest in the collateral security, which can not be jeopardized or destroyed without his discharge from his liability. The agreement for an extension of the time of payment in order to be a discharge must not only be based upon a valuable executed consideration of some sort, but the agreement must be absolute and for an extension of payment for a definite period of time.[24]

512. See also Fanning v. Murphy, 126 Wis. 538, 105 N. W. 1056, 4 L. R. A. (N. S.) 666.

[24] Norris v. Cumming, 2 Rand. 323; Smith v. Sheldon, 35 Mich. 42.

PART II.

PLEADINGS, EVIDENCE AND TRIAL PROCEDURE AS TO BILLS, NOTES AND CHECKS.

CHAPTER XXII.

PLEADINGS—IN GENERAL.

§ 228. Meaning of term.
229. Classes and order of pleadings.
§ 230. The complaint or declaration.
231. Pleadings after complaint or declaration.

§ 228. Meaning of term. The mutual formal allegations of the parties in court, in affirmance or denial of the cause of action, are called the pleadings.[1] Thus, if a party desires to collect a note, bill or check by suit, his attorney prepares for him a statement of his case in writing. The attorney of the party proceeded against prepares a statement of the defense relied on. These two statements would constitute the pleadings in the case. Their object is to apprise the court of the exact point or points concerning which its judgment is desired. In order to secure this object numerous technical rules have been from time to time adopted, tending to certainty, clearness and brevity, in the statement of the real material issue.

§ 229. Classes and order of pleadings. The questions, presented to the court in an action on a bill, note or check, or, in fact, in any action at law, may be grouped in three classes: (1) Has the court to which the process has been returned authority to hear and determine the points in controversy? (2) Has the action itself been properly instituted? (3) Upon the merits of the controversy which of the parties is entitled to a judgment, and for what amount shall such judgment be rendered? Pleadings on a bill, note or check may, therefore, be grouped into three corresponding classes: (1) Pleadings which raise the question, whether the court has the requisite authority, called *pleadings to the jurisdiction.* (2) Pleadings which raise the question, whether the action has been properly instituted, called *pleadings in abatement.* (3) Pleadings which raise the question whether, on the merits of the controversy, the plaintiff or defendant should have judgment, and which embrace all other pleadings than those previously named. These three classes of questions must be raised, when raised at all, in the foregoing order.

[1] Bowman v. McLaughlin, 45 Miss. 461, 489; Tucker v. United States, 151 U. S. 164, 38 L. Ed. 112; Desmoyer v. Hereux, 1 Minn. 17.

§ 230. The complaint or declaration. The plaintiff begins his suit on the bill, note or check by filing in the proper court a statement in writing showing the facts upon which he bases his claim for redress. This is called a declaration, complaint, petition or bill.

The first in order then of those pleadings, which raise the question whether on the merits of the controversy the plaintiff or defendant should have judgment, is the complaint, declaration, petition or bill. As above stated, this is the plaintiff's statement of his cause of action. It must contain, in legal form and with all the necessary technical averments, a clear and concise description of the facts of which he complains, of the damage which he has sustained, and of the remedy for which he seeks.[2]

The caption specifies the state, county, court and term, the name of the parties and of the action. Then follows a full and formal description of the cause of action, which forms the main body of the complaint or declaration, and, of course, varies according to the circumstances of each case. The conclusion states the damages as laid in the præcipe and writ. The declaration thus framed is signed by the plaintiff's attorney, and filed in the clerk's office. The time within which pleadings must be filed is regulated by certain *rules* which the courts are authorized to establish; and which become the law of the court establishing them.

§ 231. Pleadings after complaint or declaration. To the complaint or declaration on the note, bill or check the defendant may demur, denying that the facts alleged concerning the bill, note or check constitute a cause of action; or he may plead in bar,[3] either by traverse,[4] or by confession and avoidance.[5] Upon a traverse or demurrer, issue is immediately joined; but to a confession and avoidance the plaintiff may reply by traverse, or demurrer, or a new confession and avoidance, until, by final traverse or demurrer issue is at last attained.

[2] As to form and essentials of complaint, see, Beggs v. Arnotte, 80 Ala. 179; Hardee v. Lovette, 83 Ga. 203, 9 S. E. 680; Baldwin v. Humphrey, 75 Ind. 153; Adams v. Kerns, 11 Ind. 346; Parry v. Henderson, 6 Blackf. 72. As to amendments to pleadings, see note 51 Am. St. Rep. 426.

[3] Norton v. Winter, 1 Oreg. 47, 48, 62 Am. Dec. 297.

[4] Dickinson v. Gray (Ky.), 9 S. W. 281, 282. As to sufficiency of answers denying ownership of plaintiff, see note 66 L. R. A. 513; and as to right to plead inconsistent defenses, see note 48 L. R. A. 194.

[5] Staten v. Hammer, 121 Ia. 499, 96 N. W. 964; Le Lissa v. Fuller Coal etc. Co., 59 Kan. 319, 52 Pac. 886.

CHAPTER XXIII.

FORMS OF COMMON LAW PLEADING.

§ 232. Forms of common law pleading—In general.

DECLARATIONS—NOTE, BILL AND CHECK.

233. Payee against maker.
234. Indorsee against maker.
235. Indorsee against payee or other indorsers.
236. Declarations—Bills of exchange—Drawer against acceptor.
237. Payee against drawer for non-acceptance.
§ 238. Indorsee against indorser for non-acceptance.

ANSWERS—NOTE, BILL AND CHECK.

239. Plea.
240. Plea and affidavit of merits.
241. Affidavit denying execution of instrument.
242. Plea of payment by services.
243. Averment of set-off.
244. Statute of limitations.
245. Averment of arbitration and award.

§ 232. Forms of common law pleading—In general. The following are the most usual common law forms of declarations and answers on promissory notes, bills of exchange and bank checks. Should any other forms be desired they can be formulated by reference to those forms herein set out.

§ 233. Declaration on promissory note by payee against maker.

In the ..... Court of ..... County.
To the ..... Term, A. D. 19.....

A. B.
vs.
C. D.

A. B., plaintiff, by his attorney, complains of C. D., the defendant, in a plea of trespass on the case upon promises:

For that, whereas, the defendant on ....., at ....., made his promissory note in writing, delivered the same to the plaintiff and thereby then and there promised to pay to the plaintiff, or order, ... dollars, ... months after date thereof; (recite according to the terms of the note), which period hath now elapsed. And being so indebted the defendant in consideration thereof then and there promised the plaintiff to pay him the said sum of money, at his request.

Yet the defendant, though requested, has not paid the same,

nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of ..... dollars, and therefore he brings suit.

DONALD S. MORRIS,
Attorney for Plaintiff.

(Attach in some jurisdictions a copy of the instrument sued on.)

§ 234. Indorsee against maker. (Caption and commencement same as § 233.)

For that, whereas, the defendant, heretofore, to-wit, on .... at ....., made his promissory note in writing and thereby promised to pay to one E.... F.... or order, ... dollars in .... months after date, which period has now elapsed; and the said E.... F.... then and there indorsed the said note to the plaintiff, whereof the defendant then and there had notice, and by reason and by force of the statute in such case made and provided, the said defendant became liable to pay the said plaintiff the said sum of money in said note specified, according to the tenor and effect of the said note and of the said endorsement so thereon made. And being so indebted, the defendant, in consideration thereof, then and there promised the plaintiff to pay him the said sum of money, at his request.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to this plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of ..... dollars, and therefore he brings suit.

DONALD S. MORRIS,
Attorney for Plaintiff.

(Attach in some jurisdictions copy of instrument and indorsement.)

§ 235. Indorsee against payee or other indorsers. (Caption and commencement same as § 233.)

For that, whereas, heretofore, to-wit, on ..... at ....., one E.... F.... made his promissory note in writing and thereby promised to pay to the defendant, C. D., or order, ... dollars ..... months after the date thereof, which period has now elapsed. And the defendant, C. D., then and there indorsed the said note to the said plaintiff; and the said E.... F.... did not pay the amount of said note, although the same was duly presented

to him, of all which the defendant then and there had notice. And being so indebted, the defendant, in consideration thereof, then and there promised the plaintiff to pay him the said sum of money, at his request.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of ..... dollars, and therefore he brings suit.

DONALD S. MORRIS,
Attorney for Plaintiff.

(Attach in some jurisdictions copy of instrument and indorsements.)

§ 236. Declaration on bill of exchange by drawer against acceptor. (Caption and commencement same as § 233.)

For that, whereas, the plaintiff, on ..... at ..... made his bill of exchange in writing and directed the same to the defendant and thereby required the defendant to pay him, the plaintiff, ... dollars ..... months after date (or after sight) thereof, which period has now elapsed; and the defendant then and there accepted the said bill and promised the plaintiff to pay the same according to the tenor and effect thereof and of the acceptance thereof.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of ..... dollars, and therefore he brings suit.

DONALD S. MORRIS,
Attorney for Plaintiff.

(Attach in some jurisdictions copy of instrument.)

§ 237. Payee against drawer for non-acceptance. (Caption and commencement same as § 233.)

For that, whereas, the defendant, heretofore, to-wit, on .... at ..... made his bill of exchange in writing and directed the same to one E.... F.... and thereby required the said E.... F.... to pay to the plaintiff, or order, ... dollars, ... months after date thereof, which period has now elapsed; and then and there delivered the said bill to the plaintiff; and the same was then and there presented to the said E.... F.... for

acceptance, and said E.... F.... then and there refused to accept the same; of all which the defendant had due notice.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of ..... dollars, and therefore he brings suit.

DONALD S. MORRIS,
Attorney for Plaintiff.

(Attach in some jurisdictions copy of instrument.)

§ 238. Indorsee against indorser for non-acceptance. (Caption and commencement same as § 233.)

For that, whereas, one E.... F...., heretofore, to-wit, on ..... at ....., made his bill of exchange in writing and directed the same to one G.... H.... and thereby required the said G.... H.... to pay to the said E.... F...., or order, ... dollars .... months after date thereof, which period has now elapsed; and the said E.... F.... then and there indorsed the said bill to the defendant, who then and there indorsed and delivered the same to the plaintiff, when the same was then and there presented to the said G.... H.... for acceptance, and the said G.... H.... then and there refused to accept the same; of all of which the defendant then and there had due notice.

Yet the defendant, though requested, has not paid the same, nor any part thereof, to the plaintiff, but neglects and refuses so to do.

To the damage of the plaintiff of ..... dollars, and therefore he brings suit.

DONALD S. MORRIS,
Attorney for Plaintiff.

(Attach in some jurisdictions copy of instrument.)

§ 239. Plea.—Answers—Note, Bill and Check.

In the ..... Court of ..... County.
To the ..... Term, A. D. 19.....

State of.. }
County of } ss.

A. B. }
vs. }
C. D. }

The defendant, by J.... S...., his attorney, comes and de-

fends and says that he did not promise as in the plaintiff's declaration alleged.

And of this he puts himself upon the country.

By J.... S....,
Attorney for Defendant.

§ 240. Plea and affidavit of merits. (Same caption as § 239.)

The defendant, by J.... S...., his attorney, comes and defends and says that he did not promise as in the plaintiff's declaration alleged.

And of this he puts himself upon the country.

By J.... S....,
Attorney for Defendant.

In the ..... Court of ..... County.

State of.. } ss.
County of. }

A. B. }
vs. }
C. D. }

C.... D...., being duly sworn, says that he is the defendant named in the above entitled suit, and that he verily believes he has a good defense to said suit upon the merits to the whole of the plaintiff's demand.

C.... D....

Subscribed and sworn to before me, this ..... day of ....., A. D., 19....

.....
(Official character.)

§ 241. Affidavit denying execution of instrument. (Same caption as § 239.)

C.... D.... on oath deposes and says that he is the defendant in the above entitled cause and that he did not make and deliver the instrument in writing in the said declaration mentioned, in manner and form as the plaintiff as above in that behalf alleged.

And further affiant sayeth not.

C.... D....

Subscribed and sworn to before me this ..... day of ....., A. D., 19.....

.....
(Official character.)

§ 242. Plea of payment by services. (Same caption as § 239.)

The defendant, by J.... S...., his attorney, comes and defends and says,

That, after the said promissory note became payable, and before this action was commenced, to-wit, on ....., the plaintiff agreed to receive and the defendant agreed to render to the said plaintiff his services as ..... to the amount of said note, and that the defendant afterwards, according to said agreement, rendered such services to the plaintiff to the full amount due and payable on said note.

And of this he puts himself upon the country.

By J.... S....,
Attorney for Defendant.

§ 243. Averment of set-off. (Same caption as § 239.)

The defendant, by J.... S...., his attorney, comes and defends and says that at the commencement of this suit, to-wit, on the ..... day of ....., A. D. 1909 he, the plaintiff, was, and still is, indebted to the defendant in the sum of ..... dollars.

And of this he puts himself upon the country.

By J.... S....,
Attorney for Defendant.

§ 244. Statute of limitations. (Same caption as § 239.)

The defendant, by J.... S...., his attorney, comes and defends and says,

That the supposed cause of action in the declaration mentioned was for articles charged in a store account, and that the same did not accrue to the plaintiff at any time within ..... years next before the commencement of this suit.

And of this he puts himself upon the country.

By J.... S....,
Attorney for Defendant.

§ 245. Averment of arbitration and award. (Same caption as § 239.)

The defendant, by J.... S...., his attorney, comes and defends and says,

That on ..... the plaintiff and defendant mutually submitted the demand set forth in the plaintiff's declaration to the arbitration of ..... and .....

....., which submission was never revoked; and that on ..... at ....., the said .... and ..... made and published their award by which they declared the plaintiff entitled to One Hundred ($100.00) Dollars, which has been paid him.

And of this he puts himself upon the country.

By J.... S....,
Attorney for Defendant.

CHAPTER XXIV.

FORMS OF CODE PLEADING.

§ 246. Forms of code pleading—In general.

COMPLAINTS—PROMISSORY NOTE.

247. Complaint on promissory note by payee against maker.
248. Same—For interest due.
249. Same—Note providing for attorney's fee.
250. Same—Whole amount due on failure to pay part.
251. Same—Payable after sight, demand or notice.
252. Same—Excuse for not setting out copy of note.
253. Same—Lost note.
254. Complaint on promissory note by executor of payee against maker.
255. Complaint on promissory note — Indorsee against maker.
256. Same—Assignee by delivery against maker and assignor.
257. Same — Indorsee against maker and indorsers.
258. Same—Indorsee against indorser—Payable in another state—Negotiable by foreign statute.

COMPLAINTS—BILLS OF EXCHANGE.

259. Complaint on bill of exchange — Payee against drawer on non-acceptance.
260. Same—Payee against acceptor on non-payment.
261. Same—Drawer against acceptor on non-payment.
262. Same — Indorsee against drawer on non-acceptance.
263. Same—Indorsee against acceptor on non-payment.
§ 264. Same—Indorsee against acceptor—Payable at particular place.
265. Same — Indorsee against drawer, indorsers and acceptor on inland bill of exchange.
266. Same — Indorsee against drawer when payable at a certain place.
267. Same — Indorsee against drawer — No funds in drawer's hands—Failure to notify drawer.
268. Same — Indorsee against drawer—Excuse for non-presentment—No effects.
269. Same — Indorsee against drawer—Demand and notice waived.
270. Same—Indorsee against indorser — Non-payment by acceptor.

COMPLAINTS—BANK CHECK.

271. Complaint on bank check—Payee against drawer.
272. Same — Payee against drawee.
273. Same — Drawer against drawee.
274. Same—Indorsee against indorser.

ANSWERS—NOTE, BILL AND CHECK.

275. Answer to complaint on promissory note, bill of exchange or check—General denial.
276. Same—Denial of execution of instrument.
277. Same—Want of consideration.
278. Same—Partial want of consideration.

§ 279. Same — Without consideration as to indorsee.
280. Same—Illegal consideration.
281. Same—Failure of consideration.
282. Same—False representations.
283. Same—Payment.
284. Same—Alteration.
285. Same—That acceptance was for accommodation.

§ 246. Forms of code pleading—In general. The following are the most common code forms of complaints and answers on promissory notes, bills of exchange and bank checks. Should any other forms be desired they can be formulated by reference to those forms herein set out:

§ 247. Complaint on promissory note by payee against maker.

CAPTION AND COMMENCEMENT.

State of ....., } ss.
..... County. }

In the Superior Court.
January Term, 1909.

Complaint.

J. S.
vs.
M. S.

The plaintiff complains of the defendant, and alleges:

That the defendant, by his note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff Two Hundred Dollars.

That said note is now due and unpaid.

Wherefore, the plaintiff demands judgment for Two Hundred Dollars.

SIGNATURE.

DONALD S. MORRIS,
Attorney for Plaintiff.

COPY OF NOTE.

Indianapolis, Indiana.
December 30, 1908.

One day after date, I promise to pay to J.... S.. or order Two Hundred Dollars.

Value received.

M.... S....

§ 248. Complaint on promissory note by payee against maker—For interest due.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff ..... dollars, ... years after date, with ..... per cent per annum interest, payable annually.

That the first annual installment of said interest is now due and unpaid.

Wherefore, plaintiff demands judgment for ..... dollars.

(Copy of note.) (Signature same as in § 247.)

§ 249. Same—Note providing for attorney's fee.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff, ... months after date, the sum of ..... dollars and ..... per cent attorney's fee (or a reasonable attorney's fee), for collecting the same. (That a reasonable fee for plaintiff's attorney in this action is ..... dollars.)

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.) (Signature same as in § 247.)

§ 250. Same—Whole amount due on failure to pay part.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff ..... dollars, ... years after date, with ..... per cent per annum interest, payable annually, the whole sum of principal and interest to become due and payable upon failure to pay any of said installments of interest, or parts thereof.

That the defendant has failed to pay the second installment of said interest, which fell due on the ..... day of ....., 19.....

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.) (Signature same as in § 247.)

§ 251. Same—Payable after sight, demand or notice.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the plaintiff ..... dollars, ... days after sight (or, ... days after demand), (or, ... days after notice).

That on the ..... day of ....., 19...., said note was duly presented to defendant, with notice that payment would be required according to its terms.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.) (Signature same as in § 247.)

§ 252. Same—Excuse for not setting out copy of note.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., the defendant, by his promissory note, promised to pay the plaintiff, six months after date .....dollars, with ..... per cent per annum interest from date until paid, waiving valuation and appraisement laws.

That plaintiff is unable to set out a copy of said note, or give a fuller description thereof, for the reason that the same is wrongfully in the possession of the defendant, who refuses to deliver it to the plaintiff, although requested so to do (or, is in the hands of A. B., who refuses to surrender the same to the plaintiff, or give him a copy thereof), (or, has been destroyed without the fault of plaintiff).

That said note is now due and unpaid.

Wherefore, the plaintiff demands judgment for ..... dollars.

(Signature same as in § 247.)

§ 253. Same—Lost note.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., the defendant, by his promissory note, promised to pay the plaintiff, six months after date, ... dollars, with ..... per cent per annum interest from date until paid, waiving valuation and appraisement laws.

That he is unable to set out a copy of said note or to file an exhibit of the same herewith, for the reason that said note is lost and the plaintiff is unable to find the same and does not now know

where it is; that said note was lost after the maturity thereof; that the plaintiff never assigned, indorsed, or otherwise transferred said note, but always has been, and still is the owner thereof; that said note is due and unpaid.

Wherefore, the plaintiff demands judgment for ..... dollars.

(Signature same as in § 247.)

§ 254. Complaint on promissory note by executor of payee against maker.

(Caption.)

The plaintiff complains of the defendant, and alleges:

That on the ..... day of ....., 19...., defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay C. D. ..... dollars, on or before the ..... day of ....., 19.....

That on the ..... day of ....., 19...., in the county of ....., State of ....., C. D. died, testate, and by his last will and testament appointed the plaintiff the executor thereof.

That on the ..... day of ....., 19...., the plaintiff duly qualified and received his letters as such executor.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.) (Signature same as in § 247.)

§ 255. Complaint on promissory note—Indorsee against maker.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., the defendant, by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay A.... B...., or order, ... dollars.

That the said A.... B.... indorsed the same to the plaintiff.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note and indorsement.)

(Signature same as in § 247.)

§ 256. Same—Assignee by delivery against maker and assignor.

(Caption and commencement.)

That on the ..... day of ....., 19...., the defendant, by his promissory note, a copy of which

is filed herewith, and made a part of this complaint, promised to pay the defendant, ..., ... dollars.

That defendant, ..., assigned and delivered said note to the plaintiff without indorsement, and said ..... is made a defendant, to answer as to said assignment.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note.) (Signature same as in § 247.)

§ 257. Same—Indorsee against maker and indorsers.

(Caption and commencement.)

That on the ..... day of ....., 19...., the defendant, A.... B...., by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay the defendant, C.... D...., or order, ... dollars, at the First National Bank of Indianapolis, Indiana.

That the defendant, C.... D...., indorsed said note to the defendant, E.... F...., who indorsed the same to the plaintiff, copies of which indorsements are filed herewith, and made parts of this complaint.

That the plaintiff presented said note for payment at its maturity, and payment was refused, of which all the defendants then had due notice.

That said note is now due and unpaid.

Wherefore, the plaintiff demands judgment for .... dollars.

(Copy of note and indorsements.) (Signature same as in § 247.)

§ 258. Same—Indorsee against indorser—Payable in another state—Negotiable by foreign statute.

(Caption and commencement.)

That on the ..... day of ....., 19...., at Buffalo, New York, A.... B...., by his promissory note, a copy of which is filed herewith, and made a part of this complaint, promised to pay C.... D...., or order, ... dollars, ... months after date, at the First National Bank of Buffalo, New York.

That the defendant, C.... D...., indorsed said note to the plaintiff before maturity.

That on the ..... day of ....., 19.... (or at the maturity thereof), said note was duly pre-

sented at said bank, and payment demanded, which was refused, of which the defendant, on said day, had notice.

That, by an act of the legislature of the said State of New York, a copy of which is filed herewith, and made a part of this complaint, and which was at the time said note was executed and ever since has been in force, said note was and is negotiable as an inland bill of exchange.

That said note is now due and unpaid.

Wherefore, etc.

(Copy of note and indorsement.) (Signature same as in § 247.)

(Copy of act of legislature.)

COMPLAINTS—BILLS OF EXCHANGE.

§ 259. Complaint on bill of exchange—Payee against drawer on non-acceptance.

(Caption same as § 247.)

The plaintiff complains of the defendant, and alleges:

That on the ..... day of....., 19...., the defendant, by his bill of exchange, a copy of which is filed herewith, and made a part hereof, directed to D.... G...., requested the said D.... G.... to pay the plaintiff, or order, ... dollars, ... months after date, and the same was, on the ..... day of ....., 19...., at ....., presented to said D.... G...., and acceptance thereof demanded, which was refused. (If a foreign bill, add: and said bill of exchange was then and there protested for non-acceptance), of which defendant had due notice, but did not pay the same.

That there is now due and unpaid thereon the sum of .... dollars, for which plaintiff demands judgment.

(Signature same as in § 247.)

COPY OF BILL OF EXCHANGE.

$120.00 *Chicago, Ill., December 1, 1908.*

.....Thirty days after date.....

Pay to the order of J. S.....

.....One Hundred and Twenty.....Dollars

Value received, and charge the same to the account of

To D. G. *M. S.*

Jamestown, N. Y.

§ 260. Same—Payee against acceptor on non-payment.
(Caption and commencement same as § 247.)

That on ....., at ....., E.... F....., by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested the defendant to pay plaintiff ..... dollars, ... days after date.

That on the ..... day of....., 19...., the defendant accepted the same.

That on the ..... day of....., 19...., the plaintiff presented said bill to the defendant for payment, which was refused.

That the same is now due and wholly unpaid.

Wherefore, etc.

(Copy of bill.) (Signature same as in § 247.)

§ 261. Same—Drawer against acceptor on non-payment.
(Caption and commencement same as § 247.)

That on the ..... day of....., 19...., plaintiff, by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested the defendant to pay E.... F...., ... dollars .... days after date.

That the defendant, on the ..... day of ...., 19...., accepted said bill.

That he did not pay the same when due, although payment was demanded at the maturity thereof.

That said bill was returned to the plaintiff, and he has been compelled to pay the same to the said E.... F....

That the same is due and unpaid.

Wherefore, etc.

(Copy of bill.) (Signature same as in § 247.)

§ 262. Same—Indorsee against drawer on non-acceptance.
(Caption and commencement same as § 247.)

That on ....., at ....., the defendant, by his bill of exchange, a copy of which is filed herewith, and made part of this complaint, requested G.... H.... to pay E.... F.... ..... dollars, ... months after date.

That E.... F...., on ....., assigned the same to plaintiff by indorsement.

That plaintiff, on ....., presented said bill to

G.... H...., who refused to accept the same, of which the defendant, at the time, had due notice.

That said bill is due and wholly unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

§ 263. Same—Indorsee against acceptor on non-payment.

(Caption and commencement same as § 247.)

That on ....., 19...., at ....., E. F., by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested the defendant to pay G. H., or order, ... dollars,..... days after sight.

That the defendant, on the ..... day of ...., 19...., accepted said bill.

That the said G. H. indorsed the same to plaintiff.

That on the ..... day of ....., 19...., plaintiff presented said bill to the defendant for payment, which was refused.

That the same is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

§ 264. Same—Indorsee against acceptor—Payable at particular place.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19...., E. F., by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested the defendant to pay E. F., or order, ... dollars, ... days after date.

That the defendant, on the ..... day of..... ....., 19....., accepted the same, payable at the First National Bank of South Bend, California, and not elsewhere.

That the said E. F. indorsed said bill of exchange to the plaintiff.

That the same was, on the ..... day of..... ....., 19....., (or, on the day of its maturity), presented for payment at the said First National Bank of South Bend, California, and payment refused.

That said bill was then and there protested for non-payment, of all which the defendant then and there had due notice.

That the same is now due and unpaid.

Wherefore, etc.

(Copy of bill.) (Signature same as in § 247.)

§ 265. Same—Indorsee against drawer, indorsers and acceptor on inland bill of exchange.

(Caption and commencement.)

That on the ..... day of ....., 19....., the defendant, C. D., by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested the defendant, E. F., to pay the defendant, G. H., or order, ...dollars, ...days after date.

That on the ..... day of ....., 19....., the said E. F. accepted the same.

That the defendant, G. H., by indorsement in writing, a copy of which is filed herewith, and made part hereof, assigned said bill of exchange to the plaintiff.

That on the day of the maturity of said bill, the same was presented to the defendant, E. F., for payment, which was refused, of all which the defendants then had notice.

That the said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

§ 266. Same—Indorsee against drawer when payable at a certain place.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19....., the defendant, by his bill of exchange, a copy of which is filed herewith, and made a part hereof, requested E. F. to pay G. H. ..... dollars, ... days after date, payable at Indianapolis, Indiana.

That the said G. H. indorsed the same to the plaintiff.

That on the ..... day of ....., 19..... (or on the day of its maturity), said bill was presented (at the said National Bank of Indianapolis, Indiana), and payment demanded, which was refused, of which the defendant then and there had notice.

That said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

§ 267. Same—Indorsee against drawer—No funds in drawee's hands—Failure to notify drawer.

(Caption and commencement same as § 247.)

That the defendant, on the ..... day of....., 19....., by his bill of exchange, of which a copy is herewith filed, and made a part hereof, requested E. F. to pay the defendant, or

order, ... dollars, ... days after date.

That defendant indorsed said bill to the plaintiff.

That the same was, on the ..... day of ....., 19....., presented to said E. F. for acceptance, which was refused.

That at the time when said bill was drawn, and from thence until payment thereof was refused, the defendant had no moneys or effects in the hands of the said E. F., nor did he expect to have, or that said bill would be accepted or paid on presentment.

That defendant has sustained no damage by a failure to give notice of the refusal to accept or pay said bill.

That the same is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

§ 268. Same—Indorsee against drawer—Excuse for non-presentment—No effects.

(Caption and commencement same as § 247.)

That the defendant, on the ..... day of ....., 19....., by his bill of exchange, of which a copy is herewith filed and made a part hereof, requested E. F. to pay the defendant, or order, ... dollars, ...days after date.

That defendant indorsed said bill to the plaintiff.

That said bill was not presented for acceptance or payment, for the reason that the defendant had no effects in the hands of said E. F., either at the time of drawing said bill or at any time thereafter.

That said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

§ 269.—Same—Indorsee against drawer—Demand and notice waived.

(Caption and commencement same as § 247.)

That the defendant, on the ..... day of ....., 19....., by his bill of exchange, a copy of which is herewith filed and made a part hereof, requested E. F. to pay the defendant, or order, ... dollars, ...days after date.

That defendant indorsed said bill to the plaintiff.

That the defendant (drawee or indorser), before presentment for acceptance (or, before the bill became due), waived the pre-

sentation of the same for acceptance (or, payment), and notice of non-acceptance (or, non-payment) thereof.

That said bill is now due and unpaid.

Wherefore, etc.

(Copy of bill and indorsement.) (Signature same as in § 247.)

§ 270. Same—Indorsee against indorser—Non-payment by acceptor.

(Caption and commencement.)

That on the ..... day of ....., 19....., one G. H., by his bill of exchange, a copy of which is filed herewith, and made a part of this complaint, requested I. J. to pay C. D., or order, ... dollars, two months after date.

That the said C. D., by his indorsement thereon, a copy of which is filed herewith, and made a part hereof, assigned said bill to the plaintiff.

That on the ..... day of ....., 19....., the said drawee accepted said bill.

That on the ..... day of ....., 19..... (or, at its maturity), the same was duly presented for payment and refused (if a foreign bill, add: and said bill was thereupon duly protested), of all which the defendant then had due notice, but did not pay the same.

That said bill is now due and unpaid.

Wherefore, plaintiff demands judgment for ..... dollars.

(Copy of bill and indorsement.) (Signature same as in § 247.)

COMPLAINTS—BANK CHECK.

§ 271. Complaint on bank check—Payee against drawer.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19....., the defendant, by his check, a copy of which is filed herewith, and made a part of this complaint, requested the ..... Bank to pay to plaintiff, or bearer, ... dollars, and delivered the same to plaintiff.

That plaintiff, on the ..... day of ...., 19....., presented said check to said bank, and demanded payment, which was refused, of which the defendant, on the ..... day of ....., 19...., had notice.

That said check is now due and unpaid.
Wherefore, etc.

(Signature same as in § 247.)

COPY OF CHECK.

Detroit, Mich., December 1, 1908.

THE A. B. BANK.

Pay to the order of J. S $200.00
.....Two Hundred.....Dollars

M. S.

§ 272. Same—Payee against drawee.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19....., one M. S., by his check, a copy of which is filed herewith, and made a part of this complaint, requested the defendant to pay the plaintiff the sum of ..... dollars.

That on the ..... day of ....., 19....., plaintiff presented the same to the defendant, and demanded payment thereof, which was refused.

That said check is now due and unpaid.

Wherefore, etc.

(Copy of check.) (Signature same as in § 247.)

§ 273. Same—Drawer against drawee.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19....., plaintiff had on deposit in the defendant's bank..... ..... dollars.

That on the ..... day of ....., 19....., he drew his check on the defendant, requesting it to pay C. D., or bearer, ... dollars.

That C. D. indorsed the said check to E. F., who indorsed the same to G. H.

That on the ..... day of ....., 19....., the said G. H. presented said check to the defendant for payment, which was refused, whereby plaintiff was compelled to pay the same, to his damage ..... dollars, for which he demands judgment.

(Signature same as in § 247.)

§ 274. Same—Indorsee against indorser.

(Caption and commencement same as § 247.)

That on the ..... day of ....., 19....., A. B., by his check, a copy of which is filed herewith, and made a part of this complaint, requested the National Bank of Indianapolis, Indiana, to pay the defendant, or order, ... dollars.

That on the ..... day of ....., 19....., the defendant, by his indorsement thereon, a copy of which is filed herewith, and made a part hereof, assigned said check to the plaintiff.

That on the ..... day of ....., 19....., the plaintiff presented the same to said bank for payment, which was refused, of which the defendant then had notice.

That said check is now due and unpaid.

Wherefore, etc.

(Copy of check and indorsement.)

(Signature same as in § 247.)

ANSWER—NOTE, BILL AND CHECK.

§ 275. Answer to complaint on promissory note, bill of exchange or check—General denial.

(Caption and commencement same as § 247.)

The defendant, for answer to plaintiff's complaint, denies each and every allegation thereof.

JOSEPH W. THOMPSON,
Attorney for Defendant.

§ 276. Same—Denial of execution of instrument.

(Caption and commencement same as § 247.)

The defendant, for answer to plaintiff's complaint, alleges:

That he did not execute the note (bill of exchange) (check) sued on in this action.

Wherefore, he demands judgment for costs.

(Signature same as in § 275.)

§ 277. Same—Want of consideration.

(Caption and commencement same as § 247.)

That the note (bill of exchange), (writing sued on) was given without any consideration.

Wherefore, defendant demands judgment.

(Signature same as in § 275.)

§ 278. Same—Partial want of consideration.

(Caption and commencement same as § 247.)

The defendant, in answer to all of the amount sued on in excess of ..... dollars, alleges:

That the note sued on as to such excess was given without any consideration therefor.

Wherefore, etc.

(Signature same as in § 275.)

§ 279. Same—Without consideration as to indorsee.

(Caption and commencement same as § 247.)

That the note sued on herein was given without any consideration, and the plaintiff took the same after it fell due (or, with knowledge that the same was given without consideration).

Wherefore, etc.

(Signature same as in § 275.)

§ 280. Same—Illegal consideration.

(Caption and commencement same as § 247.)

That the consideration for the note sued on was illegal, in this: (state the facts showing its illegality, e. g.) That the defendant was, at the time of executing the note, charged with the crime of ..... (state what) and had been indicted therefor in the ..... Circuit Court; and plaintiff, to induce defendant to execute said note, represented that he could suppress and prevent said prosecution; and, in consideration of plaintiff's promise to suppress said prosecution, and cause the same to be dismissed, and for no other consideration, defendant executed to him said note.

(Or, that at the time said note was given, a suit by the defendant against the plaintiff for divorce was pending in the ..... Circuit Court and the same was given in consideration of the promise that plaintiff would not appear and defend said action, and for no other consideration.)

Wherefore, defendant says that the consideration for said note was illegal and void, and he demands judgment.

(Signature same as in § 275.)

§ 281. Same—Failure of consideration.

(Caption and commencement same as § 247.)

That the note sued on was given in consideration of the promise of plaintiff that he would sell and deliver to defendant goods and

merchandise from the store of the plaintiff, then in business at ....., as the same might, from time to time, be ordered by defendant, during the year ....., not exceeding the amount of said note.*

That thereafter defendant, during the year ....., ordered goods from plaintiff to the amount of said note; but plaintiff failed and refused to deliver the same, or any part of them.

(Or, if there is only a partial failure, say: For answer to all of said note in excess of ..... dollars, the defendant says that: (allege facts, as above, to*) That on the .... day of ....., 19....., on defendant's order, plaintiff delivered to defendant goods to the amount of ..... dollars.

That defendant thereafter, during said year, gave orders to plaintiff, at various times, for goods amounting in the aggregate to ..... dollars, the balance of the amount of said note; but plaintiff failed and refused to deliver the same, or any part of them, and defendant has received no more than said amount of ..... dollars.

And this was the only consideration for said note.

Wherefore, defendant says the consideration of said note has failed (to the extent of ..... dollars), and he demands judgment.

(Signature same as in § 275.)

§ 282. False representations.

(Caption and commencement same as § 247.)

That the note sued on was given by defendant in consideration of the sale, by plaintiff to defendant, of a certain horse.

That to induce defendant to purchase said horse and execute said note, plaintiff falsely and fraudulently represented to defendant (set out the representations, e. g.) that said horse was sound, and quiet in harness, and was only ..... years old.

That said representations were false, and known to be so by plaintiff at the time.

That said horse was not sound; but was (state how diseased), and would not work in harness, and was ..... years old.

That defendant was ignorant of the fact, and believed and relied upon said representations, and was thereby induced to purchase said horse and execute the note sued on.

That on the ..... day of ....., 19....., defendant first discovered that said representations were false, and he thereupon (or, on the ..... day of ....., 19.....,) tendered said horse to

plaintiff and demanded said note; but plaintiff refused to accept the horse or deliver the note.

That said horse, if he had been as represented by plaintiff, would have been of the value of ..... dollars; but he was, in fact, of the value of not exceeding ..... dollars, and, for defendant's use, was wholly worthless.

Wherefore, defendant demands judgment.

(Signature same as in § 275.)

§ 283. Same—Payment.

(Caption and commencement same as § 247.)

That he fully paid the note (bill of exchange) (check) sued on before the bringing of this action.

(Signature same as in § 275.)

§ 284. Same—Alteration.

(Caption and commencement same as § 247.)

The defendant, ..., for separate answer to plaintiff's complaint, admits that he signed a note payable to plaintiff, but alleges that he signed and executed the same, together with the defendant, ..., and thereafter, without the knowledge or consent of this defendant, the plaintiff materially altered and changed said note, in this: (state in what the alteration consists, e. g., he procured the same to be signed by one .....) (or, raised said note from the sum of ..... dollars, the amount for which it was given, to ..... dollars) (or, erased therefrom the name of ....., who signed the same, as a joint maker, with this defendant) without the knowledge or consent of this defendant.

(Signature same as in § 275.)

§ 285. Same—That acceptance was for accommodation.

(Caption and commencement same as § 247.)

The defendant, for answer to plaintiff's complaint, alleges:

That he accepted the bill mentioned in the complaint for the accommodation of ..... (plaintiff), and that there was no consideration for the acceptance or payment of said bill by defendant.

(If the action is by an indorsee, say: That plaintiff received said bill after maturity without consideration, and with full knowledge that defendant accepted the same without consideration.)

Wherefore, defendant demands judgment for costs.

(Signature same as in § 275.)

CHAPTER XXV.

EVIDENCE—IN GENERAL.

§ 286. In general.
287. Presumptions in general.
288. Burden of proof in general.
289. Competency of parties to negotiable instruments as witnesses.
§ 290. Declarations and admissions.

§ 286. In general. An action on a promissory note or bill of exchange is an action upon a contract and the rules and principles of evidence applying to an action upon a contract apply generally to an action on a promissory note or a bill of exchange. The general rules apply as to presumptions, burden of proof, parol evidence[1] and witnesses. There are, however, some exceptions to the general rules and where these occur they will be pointed out.

§ 287. Presumptions in general. It is presumed that negotiable paper was regularly issued for a valuable consideration, and that the payee or the one who has purchased it before maturity is a *bona fide* holder and entitled to recover the full amount.[1a] But if the defendant can show that the note was originally obtained by duress, secured through fraud, or that it was lost or stolen, the burden is changed and the presumption then arises that the guilty person will part with the instrument for the purpose of enabling some third party to recover for his benefit.[2] There is also a presumption that an indorsement, made by a payee or indorsee without date, was before maturity and that the holder acquired the note or bill before maturity, and in the absence of proof the indorsement will be presumed to have been at the time of execution of the note,[3] and at the place where the instrument is dated; and a bill of exchange is presumed to have been accepted before maturity and within a reasonable time after its date. The holder of a note payable to bearer is presumed to be the owner. The drawee of a check is presumed to know the signature of the drawers.[4] When a party draws a check on a

[1] As to parol evidence to vary contract of party to negotiable paper, see note 8 U. S. L. Ed. 316.

[1a] Swift v. Smith, 102 U. S. 442, 26 L. Ed. 193; Wayland University v. Boorman, 56 Wis. 657, 14 N. W. 819; Beer v. Clifton, 111 Cal. 51, 43 Pac. 411.

[2] Pritchett v. Sheridan, 29 Ind. App. 81, 63 N. E. 865.

[3] Collins v. Gilbert, 94 U. S. 753, 24 L. Ed. 170; Bradford v. Prescott, 85 Me. 482, 27 Atl. 461.

[4] White v. Continental Nat'l Bank, 64 N. Y. 316, 21 Am. R. 612; United States Bank v. Bank of Georgia, 10 Wheat. (U. S.) 333, 6 L. Ed. 334.

bank which is paid, it is not presumed to have been made for the payment of a debt to the bank but that it was drawn against funds of the drawer. Payment of a note is presumed from its possession by the maker.[5] The execution and delivery of a note raises the presumption of a settlement of accounts previous to its date. Where several persons sign a note they are presumed to be equally liable.

The instrument, when its execution is not denied, is *prima facie* evidence of the debt. If the plaintiff produces the paper, proves the signature and indorsements, he may usually recover, unless the defendant is able to overthrow the presumptions by satisfactory proof.

These presumptions are merely *prima facie* and are not absolute or conclusive and must be received with caution, sometimes being entitled to considerable weight and sometimes to very little; generally their chief importance is to determine the burden or order of proof.

§ 288. Burden of proof in general. There are five material allegations which as a general rule the plaintiff must prove in order to win his case unless the same are admitted. These are, first, the existence of the instrument, as described in the declaration or complaint; second, that the defendant was a party to it; third, the nature of the defendant's contract; fourth, the plaintiff's interest in and right of action upon the instrument; fifth, the breach of the contract by the defendant.[5a]

§ 289. Competency of parties to negotiable instruments as witnesses. The testimony of parties to negotiable instruments in actions upon them between other parties is as a general rule admissible or not, like the testimony of any other witnesses, depending upon whether such witnesses are interested or are not interested in the event of the suit.

In an action against one of several makers of a note, another maker of the same note is a competent witness for the plaintiff, as he stands indifferent.[6] The maker may testify for the plaintiff, in an action by the indorsee against the indorser.[7] If the indorsee proceeds against the drawer, the payee is competent to testify as to the consideration for the indorsement.[8]

As a general rule the payee after having indorsed the note, is competent to prove any matters arising after the making of the

[5] Love v. Dilley, 64 Md. 238, 1 Atl. 59; Emerson v. Mills, 83 Tex. 385, 18 S. W. 805.

[5a] As to burden of proof as to bona fide ownership, see note 11 Am. St. Rep. 323.

[6] Hillebrant v. Ashworth, 18 Tex. 307.

[7] Adams v. Moore, 9 Port. 406.

[8] State Bank v. Seawell, 18 Ala. 616.

note, which may affect the right of the holder to recover against the maker.[9]

The payee of a note who has indorsed it without recourse, is also a competent witness to prove its execution by the maker.[10]

In a proceeding against the acceptor, the drawer may testify for either party. And in an action by the indorsee against the drawer or acceptor, an indorser is in general a competent witness for either party. The testimony of an indorser standing indifferent is admissible to prove payment; time of negotiation by indorsement; alteration of date by fraud; want of interest in the indorsee; usury; and the fact of his own indorsement.[11]

In several of the states all the parties liable on a bill or note may be sued in one action, in which case, however, the parties are respectively entitled to the testimony of any other parties defendant in the suit, in the same manner as if they had been sued in several actions.

§ 290. Declarations and admissions. Declarations and admissions made by the owner of the note against his interest and before he has parted with title are admissible against him. But if he has parted with title and possession and is no longer interested in the instrument, then his declarations cannot be used as against a *bona fide* holder, who has purchased for value, before maturity and without notice.[12]

[9] Curtis v. Marrs, 29 Ill. (19 Peck) 508.

[10] Davis v. Sawtelle, 30 Me. (17 Shep.) 389.

[11] Knights v. Putnam, 20 Mass. 184.

[12] As to effect of admission to change burden of proof, see note 61 L. R. A. 535.

CHAPTER XXVI.

EVIDENCE AS TO PARTICULAR CHARACTERISTICS.

§ 291. As to time.
292. As to date.
293. As to amount payable.
294. As to place of payment.
295. As to mode of payment.
296. As to interest.
297. As to consideration.
298. As to parties.
299. As to ambiguous or omitted stipulations.
300. As to execution and delivery.
301. As to acceptance of bills.
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§ 303. As to conditions.
304. As to mistake.
305. As to fraud and duress.
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307. As to payment and discharge.
308. As to presentment and demand.
309. As to protest and notice.
310. Bills and notes as evidences.
311. As to meaning of certain terms.

§ 291. As to time. Parol evidence is admissible to show the intention of the parties when the time of payment is ambiguous.[1] If an agreement is made subsequent to the execution of the instrument whereby an extension of time is agreed upon, parol evidence is admissible to establish such fact.[2] A renewal by advanced payment[3] or the giving of a renewal note,[4] is proof of an extension of time. Where an extension of time for a definite period has been indorsed upon an instrument pursuant to agreements, a consideration is to be presumed.[5] If an agreement is entered into at the same time as the execution of the bill or note, modifying, enlarging or extending the time of payment, parol evidence will not be admitted to show such agreement.[6] But if the instrument either by fraud, mistake or accident does not

[1] McGhee v. Alexander, 104 Ala. 116, 16 So. 148; Des Moines Co. v. Hinkley, 62 Iowa 637, 17 N. W. 915; Union Bank v. Meeker, 4 La. Ann. 189, 50 Am. Dec. 559.

[2] Pierce v. Goldsberry, 31 Ind. 52; Ferguson v. Hill, 3 Stewart 485, 21 Am. Dec. 641; Merchants' Bank of Port Townsend v. Bussell, 16 Wash 546, 48 Pac. 242; Bank of Horton v. Brooks, 64 Kans. 285, 62 Pac. 675.

[3] Mariners Bank v. Abbott, 28 Me. 280; Lime Rock Bank v. Mallett, 34 Me. 547, 56 Am. Dec. 673.

[4] Williams v. Wright, 69 Ga. 759; First Nat'l Bank of Hastings v. Lamont, 5 N. D. 393, 67 N. W. 145.

[5] St. Joe & Mineral Farm Consol. Min. Co. v. First Nat'l Bank, 10 Colo. App. 339, 50 Pa. 1055.

[6] Foglesong v. Wickard, 75 Ind. 258; Clark v. Allen, 132 Pa. St. 40, 18 Atl. 1071; Hall v. First Natl. Bank, 173 Mass. 16, 53 N. E. 154, 44 L. R. A. 319.

contain the true conditions or stipulations of the contract the time of payment may, in such case, be prolonged by parol evidence.[7]

The following provisions as to time are found in the Negotiable Instruments Law:

"In determining what is a 'reasonable time,' or an 'unreasonable time' regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case."[8]

"Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day."[9]

§ 292. As to date. A presumption arises that the date upon a negotiable instrument is the time when the instrument was executed in case there is no evidence to the contrary.[10] A presumption likewise arises that the instrument was made at the place where it is dated and that the maker resides at that place.[11] A presumption arises that the payee or holder in pursuance of his implied power to do so filled in the space by placing therein the date of the execution of the instrument.[12] And if the note circulates further with the date remaining blank the presumption arises that the indorsee is authorized to fill in the true date.[13] But the maker may fill in the blank date after the indorsement without discharging the indorser. In all the preceding cases parol evidence is admissible to show that the note was executed differently. In case a note is secured and the note described in the security contains a different date than that of the note itself, parol evidence is admissible to identify the note and the security and to show that they were delivered together and that they formed one transaction.[14]

[7] Wallace v. Richards, 16 Utah 52, 50 Pac. 804; Campbell v. Upshaw, 7 Humph. (Tenn.) 185, 46 Am. Dec. 75.

[8] Neg. Ins. Law, § 4 (193), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[9] Neg. Ins. Law, § 5 (194), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[10] Knisely v. Sampson, 100 Ill. 573; Elyton Co. v. Hood, 121 Ala. 373, 25 So. 745.

[11] Rudolph v. Breener, 96 Ala. 189, 11 So. 314; Bronte v. Leslie, 30 Ill. App. 288; Hall v. Harris, 16 Ind. 180.

[12] Overton v. Matthews, 35 Ark. 146, 37 Am. Rep. 9. *Contra*, Inglish v. Breuneman, 9 Ark. 122, 47 Am. Dec. 735; Emmons v. Carpenter, 55 Ind. 329.

[13] Hepler v. Mt. Carmell Sav. Bank, 97 Pa. St. 420, 39 Am. Rep. 813.

[14] Brown v. Holyoke, 53 Me. 9. *See* also, Ohio Life Ins. & Trust Co. v. Winn, 4 Md. Ch. 253.

§ 293. As to amount payable. The general rule of evidence is that a note which calls for an amount certain and definite cannot be varied as to the amount payable by means of parol evidence. But in case the note was given in settlement of mutual accounts parol evidence is admissible to show that the amount expressed in the note was greater than the amount due, by computation subsequently made by the party receiving the note on the basis of the original accounts showing a less amount due.[15] Where a note is given for purchase money and includes illegal attorney's fees parol evidence is admissible to show that the note included such illegal fees.[16] In case of a written contract to give a note for a certain amount and the note is made for a larger amount, parol evidence is allowed to show an oral agreement to insert the larger amount.[17]

Where the amount of a bill or note expressed in the marginal figures is inconsistent with that expressed in the body of the note parol evidence is inadmissible to show that the instrument was negotiated for the amount expressed in figures.[18] So also parol evidence is not admissible to show that a note given absolutely to the payee was to be held by him merely as security for an amount to be found due upon an accounting.[19] Where the note provides for attorney's fees, without stating any amount, the value of the attorney's services may be proved though not averred within the limits of the amount claimed.[20] In case the attorney of the holder of the note agreed to take one-fourth of the attorney's fees such fact is admissible and limits the amount necessary to be paid by the maker.[21] If the amount of the attorney's fee is not expressed in the body of the note evidence is admissible to show the amount of a reasonable fee.[22]

§ 294. As to place of payment. It is presumed unless there is evidence to the contrary, that a note or bill of exchange is to be paid or accepted at the place where dated.[23] But parol evidence is admissible to make certain the designation of the place of payment.[24] If a note is made in one state and dated in an-

[15] Law v. Freeman, 117 Ind. 341, 20 N. E. 242.

[16] Macomb v. Wilkinson, 83 Mich. 486, 47 N. W. 336.

[17] Davidson v. Bodley, 27 La. Ann. 149.

[18] Poorman v. Mills & Co., 39 Cal. 345, 2 Am. Rep. 451.

[19] Ives v. Farmers Bank, 2 Allen 236; Wilson v. Wilson, 26 Ore. 251, 38 Pac. 185.

[20] Harney v. Baldwin, 124 Ind. 59, 26 N. E. 222; Starnes v. Schofield, 5 Ind. App. 4, 31 N. E. 480.

[21] Harvy v. Baldwin, *supra*.

[22] Glenn v. Porter, 72 Ind. 525.

[23] Biglow v. Burnham, 83 Iowa 120, 49 N. W. 104; Bullard v. Thompson, 35 Tex. 313.

[24] Comstock v. Savage, 27 Conn. 184; Lane v. Union Natl. Bank of Massillon, 3 Ind. App. 299, 29 N. E. 613.

other the presumption is that it is payable at the place where dated and that it is to be governed by the laws of that place.[25] If no special place or locality is set out the presumption is that it is payable at the place of business of the maker or payee.[26] If the note does not state a place of payment it is deemed payable anywhere upon demand being made after it matures and it is not necessary that it be payable at the office of the maker.[27] But if the note or bill is made payable at a certain place designated in the instrument itself it is to be presumed payable at that place.[28] If made payable at a bank it is presumed to be subject to the known lawful usages and customs of such bank.[29] If the place of payment does not appear upon the instrument parol evidence may be introduced to show that there was an agreement as to the place of payment.[30] If the place of payment is not clearly set out in the bill or note parol evidence is admissible to make the place of payment clear and certain.[31] But parol evidence cannot be introduced to change or vary the terms of the instrument or to show that a bill or note payable generally is to be paid at a particular bank.[32]

§ 295. **As to mode of payment.** If the mode of payment is not definitely expressed in the instrument parol evidence may be introduced to show the intention of the parties as to the mode of payment in dollars or any other kind of money or to show that the mode of payment was omitted by mistake.[33] Where the parties used the words current funds intending thereby money, parol evidence is admissible to show such intention.[34] If the word currency was used and it was known to the parties at the time that this word had a local significance different from its usual meaning, parol evidence will be admissible to show that they contracted with reference to this meaning.[35] But if the mode of payment is sufficiently designated in the bill or note parol evidence will not be admissible to show a different mode of pay-

[25] Tillotson v. Tillotson, 34 Conn. 335.

[26] Equitable Life Ins. Co. v. Gleason, 56 Iowa 47, 8 N. W. 790; Hartford Bank v. Greene, 11 Iowa 476; Holtz v. Boppe, 37 N. Y. 634.

[27] Engler v. Ellis, 16 Ind. 475.

[28] Abt v. American Trust & Savings Bank, 159 Ill. 407, 42 N. E. 856; Davis v. McAlpine, 10 Ind. 137; Way v. Butterworth, 106 Mass. 75.

[29] Mills v. Bank of U. S., 11 Wheat. 431, 6 L. Ed. 512; Marrett v. Brackett, 60 Me. 524.

[30] McKee v. Boswell, 33 Mo. 567.

[31] Comstock v. Savage, 27 Conn. 184.

[32] Alden v. Barbour, 3 Ind. 44; Faulkner v. Faulkner, 73 Mo. 327.

[33] Cook v. Lillo, 103 U. S. 792, 26 L. Ed. 460; Williams v. Arnis, 30 Tex. 37; Calbreath v. Va. Co. 22 Gratt. (Va.) 697; Juskoe v. Proctor, 6. T. B. Mon. (Ky.) 311.

[34] Haddock v. Woods, 46 Iowa 433.

[35] Pilmer v. Branch of Des Moines State Bank, 16 Iowa 321.

ment.[36] All oral agreements or stipulations between the parties, as to the mode of payment, which preceded or accompanied the execution of the instrument, are to be regarded as merged in it, and the latter is to be treated as the exclusive medium of ascertaining the agreement to which the parties bound themselves.

§ 296. **As to interest.** Parol evidence is admissible to prove that the rate of interest expressed in the note is a mistake[37] or to show an agreement as to an increased rate of interest indorsed on the note upon a consideration granting an extension of time.[38] If there was a parol agreement upon a sufficient consideration to change the rate of interest this may be shown.[39] If the principal of a note has been paid but the interest still remains unpaid, the note may be used as evidence in an action to recover interest on it.[40] A stub from which a certificate of deposit was taken containing a memorandum of agreement to pay interest on the certificate, is admissible in evidence to show such agreement.[41]

Where the declaration describing a note makes no mention of interest the note bearing interest is inadmissible and is considered to be a material variance with the pleading.[42]

§ 297. **As to consideration.** A presumption arises in all negotiable instruments as to a consideration being given[43] and the burden of proof is upon the maker to show a want or failure of consideration.[44] But in case the maker was insane or under some legal disability at the time of the execution of the instrument the holder must prove consideration.[45] The instruments themselves are admissible in evidence when the question of consideration is raised and circumstantial evidence is admissible to show a want of consideration or usury.[46] Parol evidence may be introduced to explain[47] or impeach the consideration of a negotiable instru-

[36] Tucker v. Talbott, 15 Ind. 114; Stein v. Fogarty (Idaho), 43 Pac. 681.

[37] Hathaway v. Brady, 23 Cal. 121.

[38] Bradshaw v. Combs, 102 Ill. 428.

[39] Hunt v. Hall, 37 Ala. 702.

[40] Mensing v. Ayres, 2 Willson (Tex. Cir. Ct. App.) 563.

[41] Thomson v. Beal, 48 Fed. 614.

[42] Beach v. Curle, 15 Mo. 105; Sawyer v. Patterson, 11 Ala. 523; Gragg v. Frye, 32 Me. 283.

[43] Halsted v. Lyon, 2 McLean 226; Louisville E. & St. L. R. Co. v. Caldwell, 98 Ind. 245; Sollenberger v. Stephens, 46 Kans. 386, 26 Pac. 690; Perley v. Perley, 144 Mass. 104, 10 N. E. 726.

[44] 83 Ala. 213, 3 So. 422; Beeson v. Howard, 44 Ind. 413; Armstrong v. Davis, 41 Cal. 494.

[45] Hosler v. Beard, 54 Ohio St. 398, 43 N. E. 1040.

[46] Nicholls v. Van Valkenburgh, 15 Hun 230; Vogt v. Butler, 105 Mo. 479, 16 S. W. 512; Guenther v. Amsden, 162 N. Y. 601, 57 N. E. 1111.

[47] First Natl. Bank v. Nugent, 99 Ind. 160; Walker v. Sherman, 11 Metc. 170; Post v. Brown, 55 Ill. App. 355.

ment.[48] But parol evidence cannot be introduced to establish a consideration which will vary the terms of the instrument.[49]

§ 298. As to parties. The instrument is presumed to correctly exhibit the character in which the parties signed the bill or note.[50] If the name of the maker and payee are the same they will be presumed to be different persons as to the rights of the assignee.[51] Where the maker draws an instrument payable to his own order, bearing the indorsement of another person, the presumption is that the indorsement was for the maker's accommodation.[52] Where a person signs an instrument and adds to his signature any words as executor, guardian, trustee, receiver, agent or officer it will be presumed that he signed as a principal and not in a representative capacity.[53] But this presumption may be overcome by evidence to the contrary. Where two or more persons sign a note as maker the presumption is that they are equally bound as such and that the debt evidenced by the note was created for the benefit of the joint makers unless a different showing could be made.[54] The order in which the makers sign a note does not in and of itself create a presumption of suretyship.[55] If a note is given by a member of a firm as a partnership note it is presumed that it is given for a partnership debt.[56] But if the note given by one member of the partnership appears to be given for an individual debt it is presumed that the firm did not consent to the note unless it can be affirmatively shown that they did.[57] Where a person signs a note under a representative description, parol evidence is admissible to show that he made the note in a representative capacity;[58] but the personal liability of persons signing with such description cannot be disproved by parol evidence.[59] Where the note is signed by one member of a

[48] Colt v. McConnell, 116 Ind. 249; Daw v. Niles (Cal.), 33 Pac. 1114.

[49] Hubbard v. Marshall, 50 Wis. 322, 6 N. W. 497; Langan v. Langan, 89 Cal. 186, 26 Pac. 764. As to admissibility of parol evidence to prove relation of parties, see note 1 L. R. A. 817.

[50] Brunswick Balke-Collender Co. v. Bautell, 45 Minn. 21, 47 N. W. 261.

[51] Cooper v. Poston, 1 Duval (Ky.) 92, 85 Am. Dec. 610.

[52] Hendrie v. Berkowitz, 37 Cal. 113, 90 Am. Dec. 251; Overton v. Hardin 6 Cald. (Tenn.) 375.

[53] Carter v. Thomas, 3 Ind. 213; Germania Bank v. Minchand, 62 Minn. 459, 65 N. W. 70, 30 L. R. A. 186; Wood v. Truax, 39 Mich, 628.

[54] McClelland v. McClelland, 42 Mo. App. 32.

[55] Summerhill v. Tapp, 52 Ala. 227; McPherson v. Andes, 75 Mo. App. 204.

[56] Trader's Bank v. Brodner, 43 Barb. (N. Y.) 379.

[57] Allen v. Carey, 33 La. Ann. 1455.

[58] LaSalle Nat. Bank v. Tolu Rock & Rye Co., 14 Ill. App. 141; Kraniger v. Peoples Bldg. Soc., 60 Minn. 94, 61 N. W. 904.

[59] Prescott v. Hixson, 22 Ind. App. 139, 53 N. E. 391.

firm, parol evidence is admissible to show that the note represents a firm obligation.[60]

A note payable to a person whose name is used as a firm name is presumed to be given to him individually and not to the firm unless it can be shown that they were the intended payees.[61] If a note is payable to a person designating him in a representative capacity, the presumption is that it was payable to him individually.[62] If a note is payable to a cashier, parol evidence is admissible to show that he received the note as cashier and agent for a particular bank.[63] Parol evidence is also admissible to show that a note payable to a person designated in an official capacity was received by him in an official capacity for a corporation.[64]

§ 299. As to ambiguous or omitted stipulations. The Negotiable Instruments Law provides, as follows, as to ambiguous stipulations:

"Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply: (1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount; (2) where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof; (3) where the instrument is not dated, it will be considered to be dated as of the time it was issued; (4) where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail; (5) where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election; (6) where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser; (7) where an instrument containing the words 'I promise to pay' is signed by two or more persons they are deemed to be jointly and severally liable thereon."[65]

And the Negotiable Instruments Law provides as follows as to instruments executed before its passage and as to matters not provided for in the act:

[60] Holmes v. Porter, 39 Me. 157.

[61] Boyle v. Skinner, 19 Mo. 82.

[62] Beach v. Peabody, 188 Ill. 75, 58 N. E. 679.

[63] Nave v. First Natl. Bank, 87 Ind. 204.

[64] Southern L. Ins. & Trust Co. v. Gray, 3 Fla. 262.

[65] Neg. Ins. Law, § 36 (17), where all cases directly or indirectly bearing upon or citing the Law are grouped.

"The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof."[66]

"In any case not provided for in this act the rules of the law merchant shall govern."[67]

§ 300. As to execution and delivery. The general rule of evidence is that the instrument is presumed to have been executed and delivered at the maker's residence[68] and at the time indicated by the date thereof.[69] The possession of the instrument by the holder is presumptive evidence of delivery;[70] and the holder must prove the execution of the instrument;[71] execution may also be proved by circumstantial evidence.[72] The fact that one person signed a note for another at his direction in his presence may be shown by parol evidence.[73] Parol evidence may be used to show that a note in the hands of the payee was not intended to be delivered,[74] but it cannot be used to show that it was delivered to him as an escrow.[75]

§ 301. As to acceptance of bills. The presumptions as to the acceptance of bills of exchange is that the acceptor knows the signature of the maker[76] and that he (the acceptor) has sufficient funds of the drawer in his hands with which to meet the demand;[77] however, evidence may be introduced to show the contrary. If the acceptance is not plain and clear but is ambiguous the same may be explained by parol evidence.[78] If there has been an oral acceptance of a bill the same may be shown by parol evidence.[79] Where a person who has accepted a bill for accommodation sues the maker he must prove both the acceptance and the payment by him.[80] But the fact that the acceptance was for

[66] Neg. Ins. Law, § 6 (195), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[67] Neg. Ins. Law, § 7 (196), where all cases directly or indirectly bearing upon or citing the Law are grouped.

[68] McAuliff v. Reuter, 61 Ill. App. 32; Strawberry Point Bank v. Lee, 117 Mich. 122, 75 N. W. 444.

[69] Ely Law Co. v. Hood, 121 Ala. 373, 25 So. 745; Hopkins v. Miller, 17 N. J. Law 185.

[70] Pastene v. Pardini, 135 Cal. 431, 67 Pac. 681.

[71] McRae v. Handeshell, 88 Ill. App. 428.

[72] Victor v. Swisky, 87 Ill. App. 583.

[73] Morton v. Murray, 176 Ill. 54, 51 N. E. 767.

[74] Scaife v. Byrd, 39 Ark. 568.

[75] Garner v. Fite, 93 Ala. 405, 9 So. 367.

[76] U. S. v. Bank of Georgia, 10 Wheat. 333, 6 L. Ed. 334; White v. Continental Natl. Bank, 64 N. Y. 316, 21 Am. Rep. 612.

[77] Turner v. Browder, 5 Bush. 216; Trego v. Lowrey, 8 Neb. 238.

[78] Gallagher v. Black, 44 Me. 99; Laften & Rand Powder Co. v. Sinsheimer, 48 Md. 411, 30 Am. Rep. 472.

[79] Pierce v. Kittredge, 115 Mass. 374.

[80] Nichols v. Morgan, 9 La. Ann. 534.

the accommodation of the drawer cannot be shown by parol evidence as against the payee.[81]

§ 302. **As to transfer.** The presumption is that a transferee or holder has procured the instrument in good faith for value and without notice of equities.[82] The party alleging the want of good faith, value or notice has the burden of proof showing the same.[83] But where the instrument in its inception was obtained by fraud or upon an illegal consideration the burden of proof is upon the holder to show that he is a *bona fide* purchaser.[84]

The indorsee who sues upon a note and produces the instrument need not give other evidence of ownership to make out a *prima facie* case.[85] A testator has been held to be the owner of an instrument where the payee's day book showed a transfer to the deceased.[86] A transfer of a note may be proven by the payee's admission without proof of his signature.[87]

All acts which show a wilful failure of inquiry and gross negligence in purchasing are admissible as tending to show bad faith on the part of the purchaser.[88]

Evidence is admissible to show that an indorsee suing upon a note had notice that the payee usually loaned money at a usurious rate.[89] The fact that the purchaser had knowledge of the fraudulent manner in which similar notes were procured by the payee may be shown by evidence as tending to show bad faith on the part of the purchaser.[90] If the note was merely indorsed for collection[91] or as collateral security[92] or for any particular purpose the same may be shown by parol evidence.

§ 303. **As to conditions.** If the conditions are written on the note, either at the bottom or on the margin, before delivery they are presumed to be a part of the original obligation.[93] But

[81] Noevak v. Excelsior Stone Co., 78 Ill. 307.

[82] Leening v. Wise, 64 Cal. 410; Forbes v. National Forge & Iron Co., 50 Ill. App. 503; Challiss v. Woodburn, 2 Kans. App. 652, 43 Pac. 792.

[83] Goodman v. Simonds, 20 How. 343, 15 L. Ed. 934; Credit Co. v. Home Mach. Co., 54 Conn. 357, 8 Atl. 472.

[84] Kniss v. Holbrook (Ind. App.), 40 N. E. 1118; Galbraith v. McLaughlin, 91 Iowa 399, 59 N. W. 338.

[85] Dawson Town & Gas Co. v. Woodhull, 67 Ind. 451, 14 C. C. A. 464.

[86] Macomb v. Wilkinson, 83 Mich. 486, 47 N. W. 336.

[87] McKown v. Mathes, 19 La. (O. S.) 542.

[88] Rowland v. Fowler, 47 Conn. 347.

[89] Blackwell v. Wright, 27 Neb. 269, 43 N. W. 116, 20 Am. St. Rep. 662.

[90] Bowman v. Metzger, 27 Or. 23, 39 Pac. 3, 44 Pac. 1090.

[91] Church v. Barlow, 9 Pick. 547. See note 17 L. R. A. (N. S.) 838.

[92] Stack v. Beach, 74 Ind. 571, 39 Am. Rep. 113.

[93] Edelen v. Worth, 69 Mo. App. 124.

if these conditions are in the form of a memorandum and contradictory in themselves they are deemed no part of the note.[94] If the conditions on the note are executed in one state and the note is payable in another state the presumption is that they were expressed with reference to the law of the state where the instrument is payable.[95] Where an instrument for the payment of money was delivered pursuant to an oral agreement that it should become binding only upon a future condition or contingency, parol evidence is admissible against the payee or holder with notice to show such agreement.[96] Where a bill of exchange was drawn for the purpose of canceling the drawer's funds on condition that it should take effect only in case of an attachment such fact may be shown by parol evidence.[97] Parol evidence is admissible to show that at the time of making a note, it was orally agreed that it should be payable from the proceeds of a mill and that if there were no proceeds it was to be returned and destroyed.[98] An agreement entered into at the time the note was executed, to the effect that the note should be returned upon a certain day if demanded, may be shown by parol evidence.[99] But the general rule is that parol evidence is inadmissible to show that an instrument, absolute in its terms, was to be paid only on a condition or contingency.[1] Thus parol evidence is not admissible to prove an oral agreement entered into contemporaneous with a note, providing that the note which is absolute and payable at a time certain, was not to be paid if certain land was not paid for;[2] neither can it be shown that a parol agreement providing that a note was not to be operative or collected until certain other securities for the same debt had been exhausted.[3] But if the conditions of the note or other obligation for money have been reduced to writing contemporaneously with the instrument, such writing will be admissible as evidence as being part of the same contract.[4] In an action by the indorsee of a note, which is negotiable in form, against the maker, an oral agreement between the maker and payee that the note was not to be negotiated cannot be shown.[5]

[94] Way v. Batchelder, 129 Mass. 301.

[95] Farmers Trust Co. v. Schennit, 83 Ill. App. 267.

[96] Smith v. Mussetter, 58 Minn. 159, 59 N. W. 995.

[97] Stevens v. Parker, 7 Allen 361.

[98] Roberts v. Greig, 15 Colo. App. 378, 62 Pac. 574.

[99] McFarland v. Sikes, 54 Conn. 250, 7 Atl. 408.

[1] Brown v. Wiley, 20 How. 442, 15 L. Ed. 965; Kempshall v. Vedder, 79 Ill. App. 368. As to admissibility of parol evidence of condition to vary or contradict, see note 3 L. R. A. 363.

[2] Gliddens v. Harrison, 59 Ala. 481.

[3] Fisher v. Briscoe, 10 Mont. 124, 25 Pac. 30.

[4] Gerrish v. Glines, 50 N. H. 9; Munro v. King, 30 Col. 238.

[5] McSherry v. Brooks, 46 Md. 103.

§ 304. As to mistake. The burden of proving that there is a mistake in an instrument is on the party alleging the mistake,[6] but this, in general, can only be proved as between the original parties, or those having notice.

Parol evidence may be introduced to show a mistake between the parties upon an instrument in settlement, or to show the amount of actual indebtedness upon a note held by written agreement as collateral security for the balance due on settlement.[7]

§ 305. As to fraud and duress. Parol evidence may be introduced in a proper case to show that the execution or indorsement of a note was obtained through fraud or misrepresentations;[8] but in order to relieve the maker it must be clearly established. The defense of fraud or duress can be established by a mere preponderance of evidence.[9] Any evidence which will tend in any manner to establish a defense of fraud or duress is admissible.[10] Fraud in obtaining a negotiable instrument may be established by the circumstantial evidence tending to prove the same.[11] Where relief is sought in equity for alleged fraud or duress in procuring a negotiable instrument the same may be shown by parol evidence.[12] But parol evidence is not admissible to show a fraudulent promise to surrender a note or bill.[13] Payment may be proven by a preponderance of evidence and any evidence is admissible which tends to corroborate or rebut a presumption of payment. Parol evidence may be introduced to explain or contradict a receipt of payment. Parol evidence can be used to show that indorsements on a note were for one and the same sum.

§ 306. Usury. It is not necessary to establish usury by direct evidence, but facts and circumstances which will tend to establish usury may be proved. The burden of proving usury is upon the party setting it up as a defense and a mere preponderance of the evidence will establish usury. Parol evidence may be admitted to show an agreement for usurious interest, and to prove that it was paid.

§ 307. As to payment and discharge. The possession of a

[6] Sheby v. Brooks, 114 Mich. 11.
[7] Thomas v. Thomas, 7 Wis. 476.
[8] Blake v. State Bank, 78 Ill. App. 166, 178 Ill. 182, 52 N. E. 957; Stout v. Judd, 10 Kans. App. 579, 63 Pac. 662.
[9] Sherwood v. First Natl. Bank, 17 Ill. App. 591; Rossiter v. Laeber, 18 Mont. 372, 45 Pac. 560.
[10] Maples v. Browne, 48 Pa. St. 458; Behl v. Schuett, 104 Wis. 76, 80 N. W. 73.
[11] Maxson v. Llewelyn, 122 Cal. 195, 54 Pac. 732.
[12] Fitzmaurice v. Mosier, 116 Ind. 563, 16 N. E. 175, 19 N. E. 180, 9 Am. St. Rep. 854.
[13] Henderson v. Thomson, 52 Ga. 149.

note by the payee is *prima facie* evidence of non-payment[14] while the possession of the instrument by the maker creates a rebuttable presumption of payment.[15] The presumption is that a note or other instrument has been paid when due.[16]

If there is no evidence to the contrary the presumption is in some jurisdictions that the taking of a negotiable instrument for a debt is a payment of the debt.[17] The presumption as to a check is that it is in payment of money due rather than for a loan.[18] Although the language of a check imports full payment, it is only *prima facie,* and not conclusive evidence of that fact.[19]

The person having possession of a negotiable instrument is *prima facie* entitled to receive payment,[20] and anyone alleging payment to a person who is not in possession of the instrument must also show that this person was authorized to receive payment.[21]

§ 308. As to presentment and demand. Parol evidence is admissible to prove demand,[22] to show an agreement for demand at a particular place[23] and to show a waiver of demand.[24]

A note payable at a bank, which remains there, is presumed to have been presented there for payment when due,[25] and the cashier of the bank is presumed to have done his duty to be at the bank to receive payment during business hours of the last day of payment.[26]

It has been held sufficient evidence of demand and refusal that no funds were provided to meet a note payable at a bank when properly presented when due, at the bank within banking hours.[27]

It is presumed when a bill of exchange is drawn that it is drawn against funds sufficient to meet it; but it has been held that when there are no funds to meet it, then it is presumed that the drawer knew this and that he did not expect it to be paid, and that therefore it is not necessary to present and give notice, as he could not be injured by such a failure.

[14] Pastene v. Pardini, 135 Cal. 432, 67 Pac. 681; Ritter v. Schenk, 101 Ill. 387.

[15] Lipscomb v. Le Lemos, 68 Ala. 592; Callahan v. Bank of Ky., 82 Ky. 231.

[16] Richardson v. Cambridge, 2 Allen 118, 79 Am. Dec. 767.

[17] Bunker v. Barron, 79 Me. 62, 8 Atl. 253, 1 Am. St. Rep. 282.

[18] Yates v. Shepardson, 39 Wis. 173.

[19] Greer v. Laws, 56 Ark. 37, 18 S. W. 1038.

[20] Paulman v. Claycomb, 75 Ind. 64; Whelan v. Reilly 61 Mo. 565.

[21] Hall v. Smith, 3 Kans. App. 685, 44 Pac. 908; Loy v. Hovey (Neb.), 89 N. W. 998.

[22] Hunt v. Malbee, 7 N. Y. 266.

[23] Meyer v. Hibsher, 47 N. Y. 265.

[24] Porter v. Kimball, 53 Barb. 467.

[25] Dykman v. Northridge, 1 App. Div. 26, 36 N. Y. Supp. 962.

[26] Folger v. Chase, 18 Pick. (Mass.) 63.

[27] Gillett v. Averill, 5 Denio (N. Y.) 85.

The burden of explaining delay, or cause of failure to present when due, is on the holder.

§ 309. As to protest and notice. The question of notice of dishonor may be supplemented or explained by evidence of the notary in addition to his certificate of protest.[28] Notice of protest, however, may be proved by any other competent evidence.[29] In case of a foreign bill of exchange it has been held that no evidence can be given of the protest for non-acceptance without producing the protest itself or showing that both the original and the books are lost.[30] The certificate of protest may be contradicted and a waiver of notice may be shown by parol.[31]

§ 310. Bills and notes as evidences. If the signature to the instrument is not properly denied a bill or note is admissible in evidence without proof of the signature.[32] A note offered in evidence as being one secured by a mortgage or deed of trust may be identified by parol evidence.[33] When the action is upon an old note which has been renewed, the renewed note must be produced in court, if not previously delivered.[34] A suit cannot be maintained upon negotiable instruments which have been executed in lieu of outstanding negotiable notes of the same maker unless these outstanding obligations are produced and surrendered.[35] At the hearing of a suit upon any negotiable instrument the instrument must be produced or there must be an excuse for its non-production.[36]

§ 311. As to meaning of certain terms. As to the meaning of certain terms the Negotiable Instruments Law makes the following provisions:

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Instrument" means negotiable instrument.

[28] Bliss v. Paine, 11 Mich. 92; Wetherall v. Clagett, 28 Md. 465.

[29] Eddy v. Peterson, 22 Ill. 535.

[30] Ky. Com. Bank v. Barksdale, 36 Mo. 563.

[31] Applegarth v. Abbott, 64 Cal. 459, 2 Pac. 43.

[32] Richardson v. Comstock, 21 Ark. 69; Talbott v. Kennedy, 76 Ind. 282.

[33] Kiser v. Carrollton D. G. Co., 96 Ga. 76, 22 S. E. 303; Cutter v. Steele, 93 Mich. 204, 53 N. W. 521.

[34] Miller v. Woods, 21 Ohio St. 485, 5 Am. Rep. 71.

[35] Garner v. Cohen, 99 Ga. 78, 24 S. E. 851.

[36] O'Neil v. O'Neil, 123 Ill. 361, 14 N. E. 844.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Written" includes printed, and "writing" includes print.[37]

[37] Neg. Ins. Law, § 2 (191), where all cases directly or indirectly bearing upon or citing the Law are grouped.

CHAPTER XXVII.

TRIAL PROCEDURE ON BILL, NOTE OR CHECK.

§ 312. Essentials of procedure.
313. Common law procedure.
314. Code procedure.
315. Steps in a jury trial.
316. Impaneling the jury.
§ 317. Opening statements.
318. Evidence of plaintiff.
319. Evidence of defendant.
320. The argument.
321. The charge, verdict and judgment.

§ 312. Essentials of procedure. In a proceeding on a note, bill or check, the following steps are essential whether the procedure is the common law or the code:

(a) An application to the courts for recovery on the note, bill or check.
(b) The process.
(c) Appearance of the adverse party.
(d) Pleadings.
(e) A trial.
(f) A decision.
(g) Its enforcement.[1]

§ 313. Common law procedure. When the procedure is under common law, the following steps appear:

(a) Suit is commenced by the filing of a præcipe and the issuing of an original writ.
(b) The defendant appears either in person or by attorney.
(c) The pleadings are as follows:
(1) The plaintiff's declaration on the bill, note or check.
(2) The defendant's plea, or, when he wishes to raise a question of law, his demurrer.
(3) The plaintiff's replication to the plea.
(4) The defendant's rejoinder.
(5) The plaintiff's surrejoinder.
(6) The defendant's rebutter.
(7) The plaintiff's surrebutter.
(d) The trial is usually by jury.
(e) The decision of the jury is called a verdict, upon which the court renders a judgment.
(f) The judgment is enforced by means of an execution.[2]

[1] Perry on Common Law Pleading, Chapt. vii; Smith's Elementary Law.

[2] Perry on Common Law Pleading, Chapt. vii; Smith's Elementary Law.

§ 314. Code procedure.[3] When the procedure is under a code, the following steps usually occur:

(a) Suit is commenced by filing a complaint or petition on the bill, note or check.

(b) The writ by which the defendant is notified that a suit has been filed against him on the bill, note or check is usually called a summons.

(c) The defendant may appear either in person or by attorney.

(d) The only pleadings usually allowed are:

(1) The complaint or petition on the bill, note or check.

(2) The answer or demurrer of the defendant to the complaint or petition.

(3) The reply of the plaintiff to the answer or demurrer to the answer.

(4) The demurrer by defendant to the reply.

(e) The trial may be with or without jury.

(f) The court's decision may take the form of a judgment or a decree, according to whether the action is of a legal or equitable nature.

(g) If the action is legal in its nature the judgment is enforced by execution; if equitable, by contempt of court proceedings.

§ 315. Steps in a jury trial. For convenience a jury trial may be divided into seven different steps as follows:

(a) Impaneling the jury.

(b) Opening statements on behalf of plaintiff and defendant.

(c) Evidence produced on behalf of plaintiff and defendant.

(d) Argument on behalf of plaintiff and defendant.

(e) Charge by the court to the jury.

(f) Verdict of jury.

(g) Judgment rendered by the court.[3a]

§ 316. Impaneling the jury. The first step in the trial is the impaneling of the jury. Almost universally in the states the jury consists of 12 men.[4] These men should be disinterested in the matter in litigation and should be entirely impartial.[5]

[3] Bliss on Code Pleading, Chapt. x, *et seq;* Smith's Elementary Law.

[3a] Smith's Elementary Law.

[4] Work v. State, 2 Ohio St. 296, 59 Am. Dec. 671; Norval v. Rice, 2 Wis. 22; Cooley's Const. Lim. (5th Ed.) 391.

[5] Ensign v. Harney, 15 Neb. 330, 48 Am. Rep. 344; Melson v. Dickson, 63 Ga. 683, 36 Am. Rep. 128.

Each party has the right to object to a certain person's sitting as a juror in his case, and, if proper reasons for the objection are given, the person so objected to cannot sit on the jury; this is called a challenge for cause.[6] It is customary for each party to be allowed to challenge from two to five persons peremptorily as jurors without assigning cause.[7] After each party has made his challenges or had an opportunity to do so, those men remaining are sworn in as the jury to try the case.

§ 317. Opening statements. Ordinarily as the second step, each party gives an outline of what he proposes to prove in what is known as an opening statement of the case to the jury.[8] The plaintiff makes his statement first and then the defendant makes his.[9]

§ 318. Evidence of plaintiff. Following this is the production of the testimony. In a proceeding on a promissory note, a bill of exchange or bank check some of the testimony exists in the form of documents, that is, in the form of written instruments and in such case the instruments themselves are introduced. Upon the bill, note or check being introduced in evidence the following six presumptions arise:

(a) A presumption of consideration or that a consideration was given for it by the plaintiff.[10]

(b) A presumption that there was the necessary delivery.[11]

(c) A presumption that all the terms of the instrument are stated therein.[12]

(d) A presumption of title on a good consideration from the fact of possession.[13]

[6] Barrett v. Long, 3 House of Lords Cases 395, 415; Gilliam v. Brown, 43 Miss. 641; Loeffler v. Keokuk etc. Co., 7 Mo. App. 785.

[7] Hayes v. Missouri, 120 U. S. 68, 30 L. Ed. 578; O'Neil v. Lake Superior Iron Co., 67 Mich. 560, 35 N. W. 162; Gulf etc. Ry. Co. v. Keith, 74 Tex. 287, 11 S. W. 1117.

[8] Kley v. Healy, 127 N. Y. 555, 28 N. E. 593; Vawter v. Hultz, 112 Mo. 633, 20 S. W. 689; Elwell v. Chamberlin, 31 N. Y. 611.

[9] Elder v. Oliver, 30 Mo. App. 575; Cortelyou v. Hiatt, 36 Neb. 584, 54 N. W. 964; Bates v. Forcht, 89 Mo. 121, 1 S. W. 120.

[10] Perot v. Cooper, 17 Colo. 80, 28 Pac. 391, 31 Am. St. Rep. 258; Germania Bank v. Michand, 62 Minn. 459, 65 N. W. 70, 54 Am. St. Rep. 653, 30 L. R. A. 286; Niblack v. Champeny, 10 S. D. 165, 72 N. W. 402.

[11] McFarland v. Sikes, 54 Conn. 250, 7 Atl. 408, 1 Am. St. Rep. 111; Schallehn v. Hubbard, 64 Kan. 601, 68 Pac. 61; Woodford v. Dorwin, 3 Vt. 82, 21 Am. Dec. 573.

[12] Hill v. Shields, 81 N. C. 250, 31 Am. Rep. 499; Rice v. Ragland, 10 Humph. (Tenn.) 545, 53 Am. Dec. 737; Dwiggins v. Merchants' Nat. Bank, (Tex. Civ. App.), 27 S. W. 171.

[13] Borgess Invest. Co. v. Vetts, 142 Mo. 560, 44 S. W. 754, 64 Am. St. Rep. 567; Middleton v. Griffith,

(e) A presumption that the debt is unpaid; and[14]

(f) If the indorsement is undated, a presumption arises that it was made before maturity.[15]

These are well established principles. But proof of certain facts becomes necessary. It is necessary in the first instance to prove the signatures of all parties necessary to prove plaintiff's title.[16] This is usually done by witnesses, who after being sworn to testify to the truth, the whole truth, and nothing but the truth, are questioned with regard to what they know as to the signatures on the note, bill or check. The party producing the witness, or his attorney, first examines the witness, bringing out the testimony desired. This is called the "direct examination." The opposite party may then cross-examine the witness, asking him questions pertaining to the matter brought out on the direct examination. There is then usually a redirect examination, and sometimes a recross-examination is allowed.

If the bill, note or check sued upon is governed by the law of some state other than the one in which the action is pending that law must be alleged and proved. It is a general principle that the courts of a state or country cannot take judicial notice of the laws of a foreign state or country; and when such laws are sought to be applied, they must be alleged and proved.[17] When relied upon, they must be proved as facts,[18] otherwise it will be presumed that they are the same as the laws of the state in which suit is brought; or what is the same in effect, when the laws of the foreign country are not put in proof as facts, the court will apply to the transaction in suit the laws of the state in which suit is brought.[19] Thus the law as to the rate of damages will be presumed to be the same where the bill is drawn in one country, and is sued on in another;[20] so it will be presumed

57 N. J. L. 442, 31 Atl. 405, 51 Am. St. Rep. 617; Smith v. Lawson, 18 W. Va. 212, 41 Am. Rep. 688.

[14] Sampson v. Fox, 109 Ala. 662, 19 So. 896, 55 Am. St. Rep. 950; Morehead Banking Co. v. Walker, 121 N. C. 115, 28 S. E. 253.

[15] Snyder v. Riley, 6 Pa. St. 164, 47 Am. Dec. 452; McDowell v. Goldsmith, 6 Md. 319, 61 Am. Dec. 305; Smith v. Lawson, 18 W. Va. 212, 41 Am. Rep. 688.

[16] Chaffee v. Taylor, 3 Allen 598; First Nat. Bank of Houghton v. Robert, 41 Mich. 709.

[17] Birmingham Water Works Co. v. Hume, 121 Ala. 168, 77 Am. St. Rep. 43; Murtey v. Allen, 71 Vt. 377, 76 Am. St. Rep. 779. Note 67 L. R. A. 33 *et seq.*

[18] Owen v. Boyle, 15 Me. 147, 32 Am. Dec. 143; Nashua Savings Bank v. Anglo-American Co., 189 U. S. 221, 47 L. Ed. 782. See notes, 11 Am. Dec. 779 and 113 Am. St. Rep. 868.

[19] McBride v. The Farmers Bank, 26 N. Y. 450; Crake v. Crake, 18 Ind. 156.

[20] Kuenzi v. Elvers, 14 La. Ann. 391.

where the law of the place when suit is brought authorizes an indorsee to sue before exhausting recourse against the maker,[21] that the law of the place of the contract is the same; and so, where by the law of the place where suit is brought a party signing in a certain way is regarded as an indorser the foreign law will be presumed to be the same.[22] But where the question is one relating to the law merchant, which is of general application, as for instance, the number of days of grace, it will be presumed that they were fixed by the law merchant—the law merchant being regarded as part of the common law.[23]

In case the instrument is one which must be protested in order for the plaintiff to recover then the fact of protest must be proved.

In a proceeding by the holder against the drawer or indorser of a bill, or the indorser of a note, the obligation of the defendant being to pay in the event the party primarily liable does not, it is necessary to prove the default of such party unless the proof be in some manner waived or dispensed with.[24] One who receives a bill or note is understood thereby to enter into an agreement with every other party, who would be entitled to bring an action on paying it, that he will present it in proper time to the drawee for acceptance,[25] when acceptance is necessary, and to the acceptor for payment, when the bill has matured;[26] and to give notice in a reasonable time, and without delay, to every such person, of a failure in the attempt to procure a proper acceptance or payment.[27] Thus in an action by the payee of a bill, or the indorsee of a bill or note, against the drawer or indorser, it is necessary to prove a presentment to the drawee for payment.

Presentment for payment as well as notice of dishonor may be proved by entries in the books of a deceased notary,[28] clerk,[29] messenger of a bank, or other person, whose duty or ordinary course of business it was to make such entries.

[21] Beauer v. Briggs, 4 La. 467; Bernard v. Barry, 1 Gr. 388.

[22] Dubois v. Mason, 127 Mass. 37.

[23] Reed v. Wilson, 12 Va. 29; Lucas v. Ladew, 28 Mo. 342.

[24] Lockett v. Howze, 18 Ala. 613; Rushworth v. Moore, 36 N. H. 188; Crane v. Trudeau, 19 La. Ann. 307; Mudd v. Harper, 1 Md. 110, 54 Am. Dec. 644.

[25] Neg. Inst. Law, § 240, 241; Schuchardt v. Hall, 36 Md. 590, 11 Am. Rep. 514; Sharpe v. Drew, 9 Ind. 281.

[26] Leonard v. Olson, 99 Ia. 162, 68 N. W. 677, 61 Am. St. Rep. 230, 35 L. R. A. 381; Hamer v. Brainerd, 7 Utah 245, 26 Pac. 299, 12 L. R. A. 434.

[27] Aldine Mfg. Co. v. Warner, 96 Ga. 370, 23 S. E. 404; Stix v. Mathews, 63 Mo. 371; Beale v. Parrish, 20 N. Y. 407, 75 Am. Dec. 114.

[28] Homes v. Smith, 16 Me. 181; Bell v. Perkins (Peck.), Tenn. 261, 14 Am. Dec. 745; Wilmington Bank v. Cooper, 1 Harr. (Del.) 10.

[29] Gawtry v. Doane, 51 N. Y. 84.

In an action against the drawer or indorser of a foreign bill (and even of an inland bill, if a protest is alleged) the plaintiff must prove dishonor, a protest for non-acceptance or non-payment. This is done by introducing the statement made out by the notary.[30]

The official seal of the notary attached to the certificate of protest is everywhere received as a sufficient *prima facie* proof of its authenticity. The courts take judicial notice of the seal, and it proves itself by its appearance upon the certificate. But it may be controverted as false, fictitious, or improperly annexed.[31]

§ 319. Evidence of defendant. After the plaintiff has produced the testimony necessary to establish his case, the defendant then introduces his testimony. This testimony in defense on a bill, note or check, is governed by the rules as applied to ordinary contracts between the purchaser for value and prior parties. If the defense is a real defense the question is solely whether the defense does exist, and any evidence tending to prove such fact is admissible. If the real defense does exist, the plaintiff cannot recover against one who has that defense.[32] Where it is a question of a personal defense, there are two classes of cases:

1. Where the defense shows lack of consideration, or release, or payment of a bill or note.
2. Where the defense shows fraud, duress, or illegality in the inception of the instrument.

In the first class it is not so much the question of wrong doing as merely a question of lack or failure of consideration, and where there is a lack or failure of consideration, the first thing to be proved by the defendant is that the plaintiff had notice of the fact that there was a want of consideration or failure of consideration. He does not prove that there was a failure of consideration, but notice and after that he proves the facts of want or failure of consideration. In the other cases, that is, those of fraud or illegality, the defendant does not prove notice but proves the fraud or illegality, itself. And when the fraud or illegality is proved the presumption of notice arises without any proof of notice and the burden of proof is on the plaintiff to prove he did not have notice.[33] When a plea of tender is made

[30] Clough v. Holden, 115 Mo. 336, 21 S. W. 1071, 37 Am. St. Rep. 393; Rosson v. Carroll, 90 Tenn. 90, 16 S. W. 66, 12 L. R. A. 727; Kellam v. McKoon, 31 Hun (N. Y.) 519.

[31] Pierce v. Indseth, 106 U. S. 546, 27 L. Ed. 254; Nichols v. Webb, 8 Wheat. 326; Bradley v. Northern Bank, 60 Ala. 258.

[32] As to real and personal defenses see *supra*, Chapts. 13 and 14.

[33] Alabama Nat. Bank v. Halsey,

it must be pleaded with a profert of the money.[34] To constitute a legal tender, money must have been offered and the offer must have been absolute and unconditional.

§ 320. **The argument.** As the next step each party may in person or by his attorney, address the jury and the court in support of his side of the controversy. Usually the plaintiff makes the first address and in it he points out the evidence he has produced which shows or tends to show why he should recover on the bill, note or check. The defendant follows the plaintiff with his address or argument showing why from the evidence there should not be recovery by the plaintiff. After this the plaintiff has the right to close the discussion.[35]

§ 321. **The charge, verdict and judgment.** At the close of the argument, the judge instructs the jury on the law of the case,[36] after which the jury retire and decide whether the plaintiff or defendant is entitled to a verdict. Upon the verdict returned by the jury the court renders a judgment.

109 Ala. 196, 19 So. 522; Woodward v. Rodgers, 31 Ia. 342; Capitol etc. Co. v. Montpelier etc. Co., (Vt. 1905), 59 Atl. 827.

[34] Caldwell v. Cassidy, 8 Cow. 271; Adams v. Hackensack Co., 15 Vroom 638.

[35] Pate v. Aurora First Nat. Bank, 63 Ind. 254; Kenny v. Lynch, 61 N. Y. 654; Slauson v. Englehart, 34 Barb. (N. Y.) 198. But see Kent v. Mason, 79 Ill. 540.

[36] Pottle v. Thomas, 12 Conn. 565; Wolf v. Troxell, 94 Mich. 573, 54 N. W. 838; Galloway v. Hicks, 26 Nebr. 531, 42 N. W. 709.

PART III.

NEGOTIABLE INSTRUMENTS LAW ANNOTATED

INTRODUCTION.

The Negotiable Instruments Law is the name given to the statute which contains within narrow compass all the fundamental principles and essential definitions of the law of negotiable instruments or commercial paper. It provides one standard for such instruments as to their formal requisites of negotiability; and it provides a uniform rule as to methods of their transfer, as to the rights of the holder and as to the liabilities of the parties. It is the result of a concerted effort to have the legislatures of the States to harmonize and make uniform the rules and principles governing the use of such instruments in the different states throughout the United States because it was realized that commercial paper does over 90% of the work of paying for and effecting the exchange of interstate commerce. Such uniformity could not be secured without codification; so this law is a codification of existing laws, that is, a codification of laws which were scattered through some ten thousand reported cases, and hundreds of statutory enactments. In other words it is a codification of the common law of negotiable instruments clearly and concisely condensed into less than two hundred sections and contained in less than thirty-five pages. In this law the disputed points and variant laws, whose discussion occupies so large a share of two and three volumed treatises on the subject, are decided and harmonized. The law is in the main declaratory in its effect but makes a few changes; it necessarily changes the law in some jurisdictions on points concerning which a conflict of laws has existed; but it may safely be said that there is not an important provision in the act which is not supported by some well considered decision of an American court of high authority or by some American statute which has been tested and proved by experience.

The easiest and best manner to have had such an uniform law throughout the United States would have been to have had the Congress of the United States to have enacted it as a Federal statute, but the Supreme Court of the United States in 1868, held that contracts (and, in consequence, negotiable instruments), between the states, did not constitute interstate commerce. From this decision the lawyers have concurred in the view that a Federal law regulating negotiable instruments, or commercial paper would be unconstitutional. Thus it became necessary in order to bring about uniformity that the different states should unite on the same law and enact it separately.

Most of the continental countries have codified the law of negotiable instruments. The French code was enacted about a century ago, and no substantial alteration has been made in it by subsequent legislation. The German General Exchange Law was adopted in 1849, and slightly modified in 1869. Today all the German States including Austria have adopted it. Other continental codes modeled upon one or the other of the above codes (but usually in later years modeled on the German code) have been adopted.

In the common law countries the first attempt at a codification was a digest of the laws of bills of exchange by Judge Chambers, of England, published in 1878, after a review by him of over 2,500 cases then reported in the English courts dealing with the subject of bills of exchange. In 1880, the Institute of Bankers and the Associated Chambers of Commerce instructed Judge Chambers to prepare a bill on the subject. He did so, putting into a few words the results of the decisions of the courts for three hundred years. This bill was introduced into Parliament and adopted practically as presented. It has been in force since that time and is known as the "English Bill of Exchange Act of 1882" and has thus operated successfully for twenty-seven years. It has been adopted by over forty of the English colonies and dependencies, that is, by over two-thirds of the total number of the various colonies and dependencies of the British Empire, and by all the most important of them.

In the United States there was prior to the drafting of the Negotiable Instruments Law a codification of the law in some states but there was nothing looking toward a codification for all the states of the Union. The earliest codification for an individual state, in a strict sense, is found in the California Code of 1872.

The history of the act looking to a uniformity of laws in all the states dates back to a few years ago. Then, at the request of the American Bar Association and through its co-operation, acts

were passed in many states providing for the appointment by the governor of "Commissions for the Promotion of Uniformity of Legislation in the United States." It was provided that these should meet in joint conference, frame and adopt statutes which they would recommend to their respective Legislatures for all of the states and thus endeavor to eliminate as much as possible the confusing conflict in the commonest principles and provisions of private law. At a conference of commissioners from nineteen states, held in 1895, a resolution was adopted requesting the committee on commercial laws to procure a draft of a bill relating to commercial paper, based on the English Bill of Exchange Act, and on such other sources of information as the committee might deem proper to consult and to prepare a codification of the law relating to bills and notes. The matter, as stated by Mr. John J. Crawford, was referred to a sub-committee consisting of Lyman D. Brewster, of Connecticut, Henry C. Willcox, of New York, and Frank Bergen, of New Jersey; and Mr. Crawford was employed by the sub-committee to draw the proposed law. In drafting this law when the decisions of the state courts were conflicting the rules of the Supreme Court of the United States were adopted and the decisions of that high tribunal were followed. When completed the draft was submitted to the sub-committee who printed it and sent copies to each member of the conference, and also to many prominent lawyers and law professors and to several English judges and lawyers, with an invitation for suggestions and criticisms. The draft was submitted to the conference which met at Saratoga in August, 1896; and the commissioners who were in attendance, being twenty-seven in all, and representing fourteen different states, in a session of three days by the entire conference went over it section by section, and made amendments therein. The draft as thus amended was adopted by the conference; and recommended for general enactment by the state Legislatures. It also met with the approval of the American Bar Association, and in such form was unanimously recommended by said association to the Legislatures of the several states and territories of the Union for adoption. Since 1897 the American Bar Association has annually recommended the adoption of the law to the several states.

The law is the result of two purposes; the first and chief purpose was to produce uniformity in the laws of the different states upon this important subject, so that the citizens of each state might know the rules which would be applied to their notes, checks and other negotiable paper in every other state in which the law was enacted, since it was an absolute impossibility for the commercial purchaser in any state to know all the details

affecting the negotiability of paper governed by the laws of all the other states. The second purpose was to preserve the law as nearly as possible as it then existed. And it may be said probably without question that in the enactment of this statute no essential feature of the law of negotiable instruments as theretofore determined has been eliminated. While the bill is simple and intelligible in its expression, great care was taken to preserve the use of words which had had repeated legal constructions and had become recognized terms in the law merchant.

New York was the first state to enact the law. The law is now in force in thirty-eight states and territories of the Union, viz.: Alabama, Arizona, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming. The bill has been introduced but has failed to pass in several states of the Union; among them are: Arkansas, Indiana, South Carolina, South Dakota and Vermont.

Before the enactment of the law in any states the situation induced by conflicting decisions and statutes embarrassed business and interrupted the free circulation of commercial paper. What was a promissory note in one State was a simple contract in another; what was an indorsement in one jurisdiction was only an assignment in another; in some States a note was not negotiable unless the words "Value received" were written in the body of the note, while in others such words were unnecessary; some jurisdictions permitted exchange to be added while others held that such addition made the note non-negotiable; days of grace were permitted in one state and not in another; what was a contract of an indorser in one State was a contract of a maker in another, or of a guarantor or maker in still another, as oral proof of the circumstances attending the making of the contract might determine; and there were other similar conflicts. These conflicts will continue to a more or less extent until all the states have adopted the law.

So long as trade and commerce were mainly confined to transactions between the citizens of a single State within its own borders, the State regulations operated fairly well and it did not matter materially that the laws of one State differed from those of another upon these subjects. But now the country has outgrown such conditions and in innumerable cases more business is done by the people or corporations of a state with the people

of other States than with their own, and commercial paper is almost universally the medium of exchange in these transactions. As our commercial activity is ever expanding and as interstate commerce has assumed such vast proportions, the necessity becomes imperative that the commercial currency of payment shall be uniform, and not variable, in its essential characteristics. This law then should be adopted in all jurisdictions for commercial advantages since the enactment of the law will tend to facilitate trade between the states, and make the transactions of business less complicated and more certain and sure, as whatever legislation tends to sustain credit helps commerce. The law of negotiable instruments affects all classes of merchants throughout the country since, as has been pointed out, negotiable instruments are the medium for the payment and settlement of nine-tenths of all trade transactions.

The law has had the test of twelve years' experience and the testimony is all one way as to its efficiency. It should be realized that a statute, which has been adopted after due deliberation by so many legislative bodies and adopted by the Congress of the United States, must exercise a beneficial influence on all and be productive of good results. It certainly is very important that no State should hesitate any longer to enact and adopt this law which it is confidently expected will, in the near future, be adopted ultimately by all the States and be the uniform law throughout the United States.

THE NEGOTIABLE INSTRUMENTS LAW.

Below is given a list of the states and territories where the Negotiable Instruments Law has been enacted:

Alabama—Laws 1907, Chap. 722; Code 1907, Chap. 115, Sec. 4958-5149, in effect Jan. 1, 1908.

Arizona—Rev. Stat. 1901, p. 852, Title 49 of Civil Code, Sec. 3304-3491; Laws 1905, Chap. 23, in effect Sept. 1, 1901.

Colorado—Laws 1897, Chap. 64, approved April 20, 1897.

Connecticut—Laws 1897, Chap. 74; Genl. Stat. Rev. 1902, p. 1028, approved April 5, 1897.

District of Columbia—Laws U. S. 1899; Laws U. S. 1901; Laws U. S. 1902, Sec. 1304-1493, in effect April 3, 1899.

Florida—Laws 1897, Chap. 4524; Genl. Stat. 1906, p. 1147; Sec. 2394-3099, approved June 1, 1897.

Hawaii—Laws 1907, Act 89, in effect April 20, 1907.

Idaho—Laws 1903, p. 380, in effect March 10, 1903.

Illinois—Laws 1907, p. 403, approved June 5, 1907.

Iowa—Laws 1902, Chap. 130; Laws 1906, Chap. 149; Code Supp. 1902, p. 352, Chap. 3-A, Secs. 3060-a1-3060-a198, approved April 12, 1902.

Kansas—Laws 1905, Chap. 310; Genl. Stat. 1905, p. 967, Chap. 70, Secs. 4533-4732, in effect June 8, 1905.

Kentucky—Laws 1904, Chap. 102, approved March 24, 1904.

Louisiana—Laws 1904, Chap. 64, approved June 29, 1904.

Maryland—Laws 1898, Chap. 119, approved March 29, 1898.

Massachusetts—Laws 1898, Chap. 533; Laws 1899, Chap. 130; Rev. Laws 1902, p. 628, Chap. 73, Secs. 18-212, in effect Jan. 1, 1899.

Michigan—Laws 1905, Chap. 265, approved June 16, 1905.

Missouri—Laws 1905, p. 243; Laws 1907, p. 366, approved April 10, 1905.

Montana—Laws 1903, Chap. 121, in effect March 7, 1903.

Nebraska—Laws 1905, Chap. 83; Comp. Stat. 1907, Chap. 41, Secs. 3558-a1-3558-a198, in effect August 1, 1905.

Nevada—Laws 1907, Chap. 62.

New Hampshire—Laws 1909, in effect January 1, 1910.

New Jersey—Laws 1902, Chap. 184, approved April 4, 1902.

New Mexico—Laws 1907, Chap. 83, approved March 21, 1907.

New York—Laws 1897, Chap. 612; Laws 1898, Chap. 336; Laws 1904, Chap. 287, became a law May 19, 1897.

North Carolina—Laws 1899, Chap. 733; Laws 1905, Chap. 327; Laws 1907, Chap. 807; Revised, 1905, p. 655, Chap. 54, Secs. 2151-2346, in effect March 8, 1899.
North Dakota—Laws 1899, Chap. 113; Civil Code, 1905, p. 1002, Chap. 90, Secs. 6303-6498, approved March 7, 1899.
Ohio—Laws 1902, p. 162; Bates' Annot. Stat. (5th ed.) pp. 1800a-1807, Secs. 3171-3178e, in effect Jan. 1, 1903.
Oklahoma—Laws 1909, in effect June 10, 1909.
Oregon—Laws 1899, p. 18; Bellinger & Cotton's Annot. Codes & Stat., p. 1440, Secs. 4403-4594, approved Feb. 16, 1899.
Pennsylvania—Laws 1901, No. 162, in effect Sept. 2, 1901.
Rhode Island—Laws 1899, Chap. 674, in effect July 1, 1899.
Tennessee—Laws 1899, Chap. 94, in effect May 16, 1899.
Utah—Laws 1899, Chap. 83, in effect July 1, 1899.
Virginia—Laws 1898, Chap. 866; Laws 1906, Chap. 219; Code, 1904, Chap. 133a, Sec. 2841a, approved March 3, 1898.
Washington—Laws 1899, Chap. 149, in effect March 22, 1899.
West Virginia—Laws 1907, Chap. 81, in effect January 1, 1908.
Wisconsin—Laws 1899, Chap. 356; Laws 1901, Chap. 41; Laws 1905, Chap. 262; Laws 1907, Chap. 361, in effect May 15, 1899.
Wyoming—Laws 1905, Chap. 43, in effect Feb. 15, 1905.

TABLE SHOWING THE CORRESPONDING SECTIONS OF THE STATUTES IN THE DIFFERENT STATES AND TERRITORIES. (KEY IS BELOW.)

No. In Text and New York.	No. In Commissioner's draft and most of the States.	No. In Illinois and Nebraska.	No. In Kansas and Oregon.	No. In Maryland.	No. In Ohio.	No. In Wisconsin.
1-7	190-196	189-195	1-7	13-19	3178-3178e	1675
20-42	1-23	1-23	8-30	20-42	3171-3171v	1675-1 to 1675-23
50-55	24-29	24-29	31-36	43-48	3171w-3172a	1675-50 to 1675-55
60-80	30-50	30-50	37-57	49-69	3172b-3172v	1676 to 1676-20
90-98	51-59	51-59	58-66	70-78	3172w-3173d	1676-21 to 1676-29
110-119	60-69	60-69	67-76	79-88	3173e-3173n	1677 to 1677-9
130-148	70-88	70-88	77-95	89-107	3173o-3174f	1678 to 1678-18
160-189	89-118	88-117	96-125	108-137	3174g-3175i	1678-19 to 1678-48
200-206	119-125	118-124	126-132	138-144	3175j-3175p	1679 to 1679-6
210-215	126-131	125-130	133-138	145-150	3175q-3175v	1680 to 1680e
220-230	132-142	131-141	139-145	151-157	3175w-3176f	1680f to 1680p
240-248	143-151	142-150	150-158	158-161	3176g-3176o	1681 to 1681-8
260-268	152-160	151-159	159-167	162-179	3176p-3176x	1681-9 to 1681-17
280-289	161-170	160-169	168-177	180-189	3176y-3177g	1681-18 to 1681-27
300-306	171-177	170-176	178-184	190-196	3177h-3177n	1681-28 to 1681-34
310-315	178-183	177-182	185-190	197-202	3177o-3177t	1681-35 to 1681-40
320-325	184-189	183-188	191-196	203-208	3177u-3177z	1684 to 1684-5
330-332						

KEY TO CORRESPONDING SECTIONS OF THE STATUTES.

The section numbers of the Negotiable Instruments Law in the text which follows, are the same as the section numbers in the law as enacted in New York, the section numbers in parenthesis in the text are the same as are found in the Commissioner's draft and are the same as the law as enacted in Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, and Wyoming. When made a part of the statutes in some states some changes have been made in the numbering of some of the sections. In Connecticut, District of Columbia, Florida, and Tennessee, the numbers are the same as those in parenthesis except there are no section numbers for numbers 190 to 196.

To get the corresponding section number for **Rhode Island** follow the sections of Kansas and Oregon as far as section 7 and after that add one to the sections of Kansas and Oregon.

To get the corresponding section number for **Arizona** follow the sections of the Commissioner's draft, which are the sections in parenthesis in the text, except that sections 191 to 194 become 184 to 187 and section 196 becomes 188.

To get the corresponding section number for **Michigan** follow the sections of the Commissioner's draft, which are the sections in parenthesis in the text, except that section 190 becomes section 1, while sections 191-196 inclusive are embraced in section 2. Hence to determine the number of other sections in Michigan add 2 to the section numbers in parenthesis.

THE NEGOTIABLE INSTRUMENTS LAW.

Article

I. General Provisions. (§§ 1-7.)
II. Form and Interpretation of Negotiable Instruments. (§§ 20-42.)
III. Consideration. (§§ 50-55.)
IV. Negotiation. (§§ 60-80.)
V. Rights of Holder. (§§ 90-98.)
VI. Liabilities of Parties. (§§ 110-119.)
VII. Presentment for Payment. (§§ 130-148.)
VIII. Notice of Dishonor. (§§ 160-189.)
IX. Discharge of Negotiable Instruments. (§§ 200-206.)
X. Bills of Exchange—Form and Interpretation. (§§ 210-215.)
XI. Acceptance. (§§ 220-230.)
XII. Presentment for Acceptance. (§§ 240-248.)
XIII. Protest. (§§ 260-268.)
XIV. Acceptance for Honor. (§§ 280-289.)
XV. Payment for Honor. (§§ 300-306.)
XVI. Bills in a Set. (§§ 310-315.)
XVII. Promissory Notes and Checks. (§§ 320-325.)
XVIII. Notes Given for a Patent Right and for a Speculative Consideration. (§§ 330-332.)

EXPLANATION.

The following explanation as to the notes to the text of the Negotiable Instruments Law may be found useful.

1. The figures, as, 1, 2, 3, 4, et cetera, without anything connected therewith refer to notes citing cases which directly construe the Law.

2. The letters, as, (a), (b), (c), (d), et cetera, in parenthesis, without anything connected therewith refer to notes which point out the differences, if any, in the Law as enacted in the various states and territories.

3. The combination of the figures and letters, as, 1a, 2a, 3a, 4a, et cetera, refer to notes citing cases which either do not cite the Law or were decided previous to the enactment of it.

4. The reference "See text §—" refers to the sections of the text in Part I, or the first part of the book.

5. The references to the English Act are to sections of that Act in Appendix C.

ARTICLE I.

GENERAL PROVISIONS.

§ 1 (190). Short title.
2 (191). Definitions and meaning of terms.
3 (192). Persons primarily liable on instrument.
4 (193). Reasonable time, what constitutes.
§ 5 (194). Time, how computed; when last day falls on holiday.
6 (195). Application of chapter.
7 (196). Rule of law merchant; when governs.

Sections 1 to 7 above are the sections of the New York Law; sections 190 to 196 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 190 to 196 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, and Wyoming.

They are found as the following sections in the following states and territories: As sections 3487 to 3491 in Arizona (N. B.—sections corresponding to 1 and 6 omitted); as 189 to 195 in Illinois; as 1 to 7 in Kansas and Oregon; as 13 to 19 in Maryland; as 1 to 2 in Michigan; as 189 to 194 in Nebraska; as 3178 to 3178e in Ohio; as sections 1 to 7 in Rhode Island; as sections 1675 in Wisconsin.

§ 1 (190). Short title. This act shall be known as the Negotiable Instruments Law.[1]

See text, § 12.

Nebraska omits this section.

1—This section construed: See Baltimore & Ohio Railroad Co. v. First National Bank of Alexandria, 102 Va. 757, 758; Toole v. Crafts, 193 Mass. 110; Gibbs v. Guaraglia (N. J.), 67 A. 81.

Construing corresponding provision of the English Bills of Exchange Act: See Bank of England v. Vagliano, L. R. [1891], App. Cas. 144.

§ 2 (191). Definitions and meaning of terms. In this act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.[1]

"Bill" means bill of exchange, and "Note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.[2]

"Indorsement" means an indorsement completed by delivery.[3]

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

See text, §§ 46, 53, 76, 128, 311.

This section construed:

1—"Bearer" Mayers v. McRimmon, 140 N. C. 640, 53 S. E. 447; Mass. Nat. Bank v. Snow, 187 Mass. 159, 72 N. E. 959.

2—"Holder" Mayers v. McRimmon, 140 N. C. 640, 53 S. E. 447; Voss v. Chamberlain, — Iowa —, 117 N. W. 269; Farmers' Bank v. Bank of Rutherford, 115 Tenn. 64, 88 S. W. 939; New Haven Mfg. Co. v. New Haven Pulp Co., 76 Conn. 126, 55 Atl. 604; Vander Ploeg v. Van Zuuk (Iowa), 112 N. W. 807. The payee or endorsee of a promissory note, who is in possession of it, though not the beneficial owner thereof, may sue thereon in his own name by consent of the owner, and for such purpose may strike out his own and subsequent indorsements. R. M. Owen & Co. v. Storms & Co., (N. J. 1909), 72 Atl. 441.

3—"Indorsement" Louisville Co. v. International Trust Co., 18 Col. App. 345, 71 P. 898.

Construing corresponding provision of the English Bills of Exchange Act: See 2 2-21 (1), last paragraph Bills of Exchange Act; Day v. Longhurst W. N. (1893) 3; Walters v. Neary, 21 T. L. R. 146.

Issue: Clutton v. Attenborough (1897), A. C. 90.

§ 3 (192). Person primarily liable on instrument. The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.[1]

See text, § 119.

Cross sections: 37 (18), 211 (127), 325 (189).

Kansas omits the last sentence.

1—This section construed: Rouse v. Wooten, 140 N. C. 557, 53 S. E. 430; Deahy v. Choquet, 28 R. I. 338, 67 Atl. 421; National Citizens'

Bank v. Taplitz, 81 N. Y. Supp. 422, 81 App. Div. 593; Weiss v. Rieser, 114 N. Y. S. 984.

The addition of the word "surety" to his signature does not relieve the accommodation maker from primary liability. Cellers v. Meachem (Oregon), 89 Pac. 426.

§ 4 (193). Reasonable time, what constitutes. In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instrument, and the facts of the particular case.[1]

See text, §291.

1—This section construed: McLean v. Bryer, 24 R. I. 599, 54 Atl. 373; Gordon v. Levine, 194 Mass. 418, 80 N. E. 505; Mfg. Co. v. Summers, 143 S. C. 102, 55 S. E. 522; Citizens' Bank v. First Nat'l Bank (Iowa), 113 N. W. 481. See Columbia Banking Co. v. Bowen (Wis.), 114 N. W. 451; Merritt v. Jackson, 181 Mass. 69.

Construing corresponding provision of the English Bills of Exchange Act: See 40 (3), 45 (2) 73, 74 (2), 86 (2), 89 (1) 74; Wheeler v. Young, 13 T. L. R. 468.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Commercial Nat'l Bank v. Zimmerman, 185 N. Y. 310; German Am. Bank v. Mills, 99 App. Div. (N. Y.) 312; Bank v. Coverley, 7 Gray, 217; Holbrook v. Burt, 22 Pick. 555; Gilmore v. Wilbur, 12 Pick. 124; Northwestern Coal Company v. Bowman, 69 Ia. 153; Tomlinson Carriage Co. v. Kinsell, 31 Conn. 273; Aymas v. Beers, 7 Cow. 705.

§ 5 (194). Time, how computed; when last day falls on holiday. Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.[1]

See text, § 291.

1—See the New York Statutory Construction Law as to computing of time (§§ 26, 27).

This provision changes the rule of the law merchant, but affirms the previous statutory rule in many jurisdictions.

Construing corresponding provision of the English Bills of Exchange Act: See 14 (1) (a) (b), 92; 14 (1); Kennedy v. Thomas (1894), 2 Q. B. 759.

§ 6 (195). Application of chapter. The provisions of this act do not apply to negotiable instruments made and delivered prior to the passage hereof.[1]

See text, § 299.

Omitted in Arizona act.

1—This section construed: The Negotiable Instrument Act governs

a renewal note executed after the taking effect of the act, though the original note was given before the act, especially where there were two new indorsers on the renewal note, thus making it in law a new contract. Walker v. Dunham (Mo. 1909), 115 S. W. 1086.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Rogers v. Vass, 6 Iowa 405; Schneider v. Hussey, 2 Idaho 12, 1 Pac. 343; State v. Bemis, 45 Neb. 724, 64 N. W. 348.

§ 7 (196). Law merchant; when governs. In any case not provided for in this act the rules of the law merchant shall govern.[1]

See text, § 299.

Kentucky omits this section.

Iowa adds the following: "Sec. 198. Days of grace—demand made on. A demand made on any one of the three following days following the day of maturity of the instrument, except on Sunday or a holiday, shall be as effectual as though made on the day on which demand may be made under the provisions of this act, and the provisions of this act as to notice of non-payment, non-acceptance, and as to protest shall be applicable with reference to such demand as though the demand were made in accordance with the terms of this act; but the provisions of this section shall not be construed as authorizing demand on any day after the third day from that on which the instrument falls due according to its face.

1—This section construed: Nat'l Exch. Bank v. Lester, 119 App. Div. 786, 104 N. Y. S. 418; Timbel v. Garfield Nat. Bank, 121 App. Div. 870, 106 N. Y. S. 497.

Where the Negotiable Instruments Law conflicts with Supreme Court decisions, as to instruments made subsequent to the passage of that act the act controls instruments made subsequent to its passage. First National Bank of Shawars v. Miller, (Wis. 1909) 120 N. W. 820.

Construing corresponding provision of the English Bills of Exchange Act: See 97 (2); 97 (2) In re Gillespie, 16 Q. B. D. 702, affirmed 18 Q. B. D. 286.

ARTICLE II.

FORM AND INTERPRETATION.

§ 20 (1). Form of negotiable instrument.
21 (2). Certainty as to sum; what constitutes.
22 (3). When promise is unconditional.
23. (4). Determinable future time; what constitutes.
24 (5). Additional provisions not affecting negotiability.
25 (6). Omissions; seal; particular money.
26 (7). When payable on demand.
27 (8). When payable to order.
28 (9). When payable to bearer.
29 (10). Terms, when sufficient.
30 (11). Date, presumption as to.
31 (12). Ante-dated and post-dated.
32 (13). When date may be inserted.
§ 33 (14). Blanks, when may be filled.
34 (15). Incomplete instrument not delivered.
35 (16). Delivery; when effectual; when presumed.
36 (17). Construction where instrument is ambiguous.
37 (18). Liability of persons signing in trade or assumed name.
38 (19). Signature by agent; authority; how shown.
39 (20). Liability of person signing as agent, etc.
40 (21). Signature by procuration; effect of.
41 (22). Effect of indorsement by infant or corporation.
42 (23). Forged signature; effect of.

Sections 20 to 42 above are the sections of the New York Law.

Sections 1 to 23 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 1 to 23 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, and Wyoming.

They are found as the following sections in the following states and territories:

As sections 3304-3326 in Arizona; as 8 to 30 in Kansas and Oregon; as 20 to 42 in Maryland; as 3 to 25 in Michigan; 3171L to 3171V in Ohio; as 9 to 31 in Rhode Island; as 1675-1 to 1675-23 in Wisconsin.

§ 20 (1). Form of negotiable instrument. An instrument to be negotiable must conform to the following requirements:[1]

1. It must be in writing[1a] and signed by the maker or drawer.[2a]

2. Must contain an unconditional promise or order to pay a sum certain in money.[2, 3a]

3. Must be payable on demand, or at a fixed or determinable future time.[3, 4a]

4. Must be payable to order or to bearer.[4, 5a]

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.[5, 6a]

See text, § 40.

Cross sections: 2 (191) "written," 22 (3), 21 (2), 26 (7), 210 (126), 28 (9), 23 (4), 95 (56), 320 (184), 204 (123), 225 (137), 27 (8), 25-5 (6), 215 (131).

The Michigan Act says: "Certain sum" instead of "sum certain."

The Arizona, Idaho, Iowa and North Carolina acts read: "Must be payable to the order of a specified person or to bearer," instead of as in sub-division 4 above.

The Wisconsin act (No. 1675-1) adds: "But no order drawn upon or accepted by the treasurer of any county, town, city, village or school district, whether drawn by any officer thereof or any other person, and no obligation nor instrument made by any such corporation or any officer thereof, unless expressly authorized by law to be made negotiable, shall be, or shall be deemed to be, negotiable according to the custom of merchants, in whatever form they may be drawn or made. Warehouse receipts, bills of lading and railroad receipts upon the face of which the words 'not negotiable' shall not be plainly written, printed or stamped, shall be negotiable as provided in section 1676 of the Wisconsin Statutes of 1878, and in sections 4194 and 4425 of these statutes, as the same have been construed by the supreme court."

This section construed:

1—St. Paul's Episcopal Church v. Fields (Conn. 1909), 72 Atl. 145; Borough of Montvale v. People's Bank (N. J.) 67 Atl. 67; Kimpton v. Studebaker Bros. Co., — Idaho —, 94 Pac. 1039; Benedict v. Kress, 97 App. Div. 65, 89 N. Y. S. 607; Rieck v. Daigle (N. D.) 117 N. W. 346. A promissory note secured by a mortgage which provides that the same shall become due and payable upon failure to comply with any of the conditions in the mortgage is negotiable. Thorpe v. Mindeman, 123 Wis. 149, 101 N. W. 417.

2—Waddell v. Hanover National Bank, 48 Misc. R. 578, 97 N. Y. S. 305; and Nat. Bank. v. Cable, 73 Conn. 568, 48 Atl. 428. An instrument drawn by the special agent of a foreign fire insurance company directing the drawee upon acceptance to pay to the payee $360.43 is not an unconditional promise to pay and is not negotiable. Berenson v. London & Lancashire Fire Ins. Co. of Liverpool, Eng., (Mass. Feb. 1909), 87 N. E. 686; Hibbs v. Brown, 190 N. Y. 167, 82 N. E. 1108; Allison v. Hollenbeck (Iowa), 114 N. W. 1059.

A certificate of deposit, if not payable to order or bearer, is not a negotiable instrument. Zander v. N. Y. Security & Trust Co., 81 N. Y. S. 1151; Westberg v. Chicago L. & C. Co., 117 Wis. 589.

3—As between the parties to a note, the failure to extend the payment of the note to any definite time, does not render the extension invalid. Drake v. Pueblo Nat. Bank, 96 P. 999 (Colo. 1908).

Must be payable on demand or at a determinable future time: Union Stock Yards Nat. Bank v. Bolan (Idaho), 93 Pac. 508; Torpey v. Tibo,

184 Mass. 307, 68 N. E. 223; Hibbs v. Brown, 190 N. Y. 167, 82 N. E. 1108; Smith v. Blovcom, 45 Mich. 371; Sec. Nat. Bank v. Wheeler, 75 Mich. 546.

4—A promissory note not payable to order or bearer is not negotiable. Fulton v. Varney, 117 App. Div. 572, 577, 102 N. Y. S. 608; Gilley v. Harrell (Tenn.), 101 S. W. 424; Westberg v. Chicago Lumber Co., 117 Wis. 589, 94 N. W. 572.

Certificate of deposit payable to "A or his assigns" is not negotiable. Zander v. N. Y. Security & Trust Co., 39 Misc. R. 98, 78 N. Y. Supp. 900; affirmed, 81 App. Div. 635, 81 N. Y. S. 115.

5—Drawee must be indicated with reasonable certainty. Rinker v. Lauer (Idaho), 88 Pac. 1057.

Construing corresponding provisions of English Bills of Exchange Act: 8 (1), National Bank v. Silke (1891), 1 Q. B. 435; 3 (2), Bavins v. London & S. W. Bank (1900), 12 Q. B. 270; 83 (1), Kirkwood v. Carroll (1903), K. B. 531; Yales v. Evans, 61 L. J. Q. B. 466, 3 (1), 8 (2), 6 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Instrument must be in writing; writing may be in pencil; Brown v. Butchers' Bank, 6 Hill 443; Gary v. Physic, 5 B. & C. 234 (1826).

2a—It must be signed: McCall v. Taylor, 34 L. J. R. C. P. 365; Ry. v. Harper, L. R. 7 Q. B. 78; Cadillac State Bank v. Cadillac Stove, etc. Co., 129 Mich. 15; Rodgers v. Colt, 6 Hill 322; Brown v. McHugh, 35 Mich. 50; Bliss v. Johnson, 162 Mass. 323.

3a—Must be an unconditional promise or order (1) to pay a fixed sum (2) in money (3).

(1)—White v. Cushing, 88 Me. 339; Humphrey v. Beckwith, 48 Mich. 151; Brooke v. Smithers, 110 Mich. 569; Worden v. Dodge, 4 Denio 159; Iron City Bank v. McCord, 131 Pa. St. 52; Dilley v. Van Wie, 6 Wis. 206.

(2)—Parson v. Jackson, 99 U. S. 440; Parker v. Plymell, 23 Kan. 402; Dodge v. Emerson, 34 Me. 96; Marrett v. Equitable Ins. Co., 54 Me. 537; Palmer v. Ward, 6 Gray (Mass.) 340; Cushman v. Haynes, 20 Pick. 132; Knight v. Jones, 21 Mich. 161; Smith v. Crane, 33 Minn. 144.

(3)—Snerbach v. Prichett, 58 Ala. 451; First Nat. Bank v. Slette, 67 Minn. 425; Chandler v. Colvert, 87 Mo. App. 368; Morton v. Naylor, 1 Hill (N. Y.) 583; Quincy v. Merritt, 11 Humph. (Tenn.) 439; First Nat. Bank v. Greenville Nat. Bank, 84 Tex. 40; Hogue v. Williamson, 85 Tex. 553; Klauber v. Biggerstaff, 47 Wis. 557. See Bradley v. Hill, 4 Bliss 473, Fed. Cas. No. 1783.

4a—Must be payable on demand or at a fixed future date: Walsh v. Dart, 12 Wis. 709; Bowman v. McChesney, 22 Grat. 609; Anniston Loan & Trust Co. v. Stickney, 108 Ala. 146, 31 So. R. 234; Brooks v. Hargraves, 21 Mich. 254; Glidden v. Henry, 104 Ind. 278, 54 Am. Rep. 316; Second Nat. Bank v. Wheeler, 75 Mich. 546.

5a—Must be payable to order or bearer: Curtis v. Hazea, 56 Conn. 146; Yinghing v. Kahlhaas, 18 Md. 148; Pitier v. Babillon, 45 Mich. 384; Backus v. Donforth, 10 Conn. 297.

Bonds payable to bearer: Co. of Beacon v. Armstrong Co., 44 Pa. St. 63; Con. v. Lifferie, 27 Pa. St. 413; Nat. Ex. Bank v. Hartford, etc. R. R., 8 R. I. 375.

As to treasury notes see: Frezer v. D'Quilliers, 2 Pa. St. 200.

6a—Drawee must be designated with reasonable certainty: Ala. Coal

Mining Co. v. Bramard, 35 Ala. 476; Fink v. Babbit, 156 Ill. 408; Wheeler v. Webster, 12 D. Smith (N. Y.) 1; Walrons v. Halbrook, 39 Tex. 572; Pelo v. Reynolds, 9 Exch. 410; Gray v. Milner, 8 Taunt 739; Forward v. Thompson, 12 U. C. I. B. 103.

Village orders not negotiable: Miner v. Vidder, 66 Mich. 101.

In some states certain instruments are declared by statute to be negotiable: See statutes Iowa and Georgia; Hanover Nat. Bank v. Am. Dock & Trust Co., 148 N. Y. 612; Com. Exchange Bank v. Same, 149 N. Y. 174; Goodwin v. Robarts, L. R. 10 Ex. 337.

Equivalents of money: Oliver v. Shoemaker, 35 Mich. 464; Judah v. Harris, 19 Johns 144; Pardee v. Fish, 60 N. Y. 265; Swetland v. Creigh, 15 Ohio 118; Phoenix Ins. Co. v. Gray, 13 Mich. 191; Lacy v. Holbrook, 4 Ala. 88; Tellford v. Patton, 144 Ill. 611; Citizens' Nat. Bank v. Brown, 45 Ohio St. 39; Bull v. Bank, 123 U. S. 105.

But see Nat. State Bank v. Ringel, 51 Ind. 393; Johnson v. Henderson, 76 N. C. 227; Wright v. Hart's Adm., 44 Pa. St. 454; Texas Land & Cattle Co. Bank v. Carrol, 63 Tex. 48; Klauber v. Briggerstaff, 47 Wis. 561; Swift v. Whitney, 20 Ill. 144; Mitchell v. Hewett, 13 Miss. 361; Butler v. Pine, 8 Minn. 284.

See, Bank of Mobile v. Brown, 42 Ala. 108; Dillard v. Evans, 4 Ark. 175; Huse v. Hamblin, 29 Ia. 501.

§ 21 (2). Certainty as to sum; what constitutes. The sum payable is a sum certain within the meaning of this act, although it is to be paid:

1. With interest;[1] or
2. By stated installments;[1a] or
3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due;[2] or
4. With exchange,[2a] whether at a fixed rate or at the current rate; or
5. With costs of collection or an attorney's fee,[3a] in case payment shall not be made at maturity.[3]

See text, §§ 11, 48.

Cross sections: 20 (1), 114 (64-1), 180 (109).

The Idaho, Iowa and North Carolina acts omit: "Or of interest."

See section 197 of the North Carolina act. Nebraska adds: "Provided that nothing herein contained shall be construed to authorize any court to include in any judgment on an instrument made in this state any sum for attorney's fees or other costs not allowable in other cases."

This section construed:

1—Interest. Baumester v. Kuntz (Fla.), 42 So. 886.

2—Default in payment provisions. Thorpe v. Mindemand, 123 Wis. 149, 101 N. W. 417; Hodges v. Wallace, 129 Wis. 84.

3—Attorney's fees. Morrison v. Ornbaun, 30 Mont. 111, 75 Pac. 953.

In Maryland a contract in a note to pay a collection fee on default is valid to the extent of a reasonable fee actually expended or contracted to be paid. Chestertown Bank of Maryland v. Walker, 163 F. 510.

First National Bank of Showans v. Miller (Wis. 1909), 120 N. W. 820.

Construing corresponding provisions of English Bill of Exchange Act: 9 (1).

A note providing that interest shall be paid but not specifying the rate is not negotiable in that it lacks certainty as to sum. Lamberton v. Aiken, 2 F. 189 (1899) Ct. of Session.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Installments: Wright v. Irwin, 33 Mich. 32; Clark v. Speer, 61 Kan. 526, 49 L. R. A. 190; Markey v. Corey, 108 Mich. 184; Riker v. Sprague Mfg. Co., 14 R. I. 402; Coope v. How, 29 L. T. (N. S.) 369.

2a—Exchange: Hasting v. Thompson, 54 Minn. 184, 55 N. W 968; Johnson v. Frisbie, 15 Mich. 286; Bullock v. Taylor, 39 Mich. 137; Flagg v. School District, 4 N. D. 30; Second Nat. Bank of Aurora v. Basuier, 65 Fed. Rep. 58; Whittle v. Fond du Lac Nat. Bank (Tex.), 26 S. W. R. 1106. Contra—Culbertson v. Nelson, 93 La. 187.

3a—Attorney's fees: First Nat. Bank v. Shingleton, 98 Ala. 602, 14 So. 545; Montgomery v. Crossthwait, 90 Ala. 553; Trader v. Chichester, 41 Ark. 242; Stapleton v. Louisville Banking Co., 95 Geo. 802; Stoeman v. Pyle, 35 Ind. 103; Dorsey v. Wolff, 142 Ill. 589; Clafton v. Bank of Aberdeen, 75 Miss. 929, 23 So. 344; Shenandoah Nat. Bank v. Marsh, 89 Iowa 273, 56 N. W. 458; Seaton v. Scoville, 18 Kans. 433; Chandler v. Kennedy, 8 S. Dak. 56, 65 N. W. 439; Dietrich v. Boylie, 23 La. Ann. 767; Stark v. Olsen, 44 Neb. 646; Heard v. Dubuque Bank, 8 Neb. 10; Benn v. Kutzschan, 24 Ore. 28; Oppenheimer v. Farmers' & Merchants' Bank, 97 Tenn. 19, 36 S. W. 705; Tyler v. Walker, 101 Tenn. 306, 47 S. W. 424; Second National Bank v. Anglin, 6 Wash. 403; Chicago Ry. Equipment Co. v. Merchants' Bank, 136 U. S. 268; Farmers' Nat. Bank v. Sutton Mfg. Co., 6 U. S. App. 312, 321, 52 Fed. 191.

A rule contrary to the Negotiable Instruments Law is expressed in the following cases when the note provides for attorney fees: Findley v. Pott, 131 Col. 385; Conrad Seipp Brewing Co. v. McKittrich, 86 Mich. 191; People v. Bennett, 122 Mich. 281; Johnston v. Speer, 92 Pa. St. 227; First Nat. Bank v. Bynum, 84 N. C. 24; First Nat. Bank v. Gay, 71 Mo. 627; Jones v. Rodotz, 27 Minn. 240; Morgan v. Edwards, 53 Wis. 599; Maryland Fertilizer Co. v. Newman, 60 Md. 584; Carroll Co. Savings Bank v. Strother, 131 Col. 385; First Nat. Bank v. Lerson, 60 Wis. 206; Gilmor v. Hirst, 56 Kan. 626; Tinsley v. Hoskins, 111 N. C. 340.

§ 22 (3). When promise is unconditional. An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount;[1a] or

2. A statement of the transaction which gives rise to the instrument.[2a]

But an order or promise to pay out of a particular fund is not unconditional.[3a]

See text, §§ 49, 51.

Cross sections: 20 (1-2), 330.

1—This section construed:

Unqualified order or promise to pay. Hibbs v. Brown, 109 N. Y. 167, 82 N. E. 1108; Waddell v. Hanover Nat. Bank, 48 Misc. R. 578, 97 N. Y. S. 305.

Note with words "on account of contract between" the drawee and maker written on it is negotiable. First Nat. Bank v. Lightner, 74 Kans. 736, 88 Pac. 58.

An order to pay at a certain time and "charge the same to the $1,800 payment" is negotiable. Sheppard v. Abbott, 179 Mass. 300, 60 N. E. 782.

Statement of transaction which gives rise to the instrument. National Savings Bank v. Cable, 73 Conn. 568, 48 Atl. 428; Fulton v. Varney, 117 App. Div. 572, 102 N. Y. Supp. 608.

A statement that title to the chattel for which the note was given shall remain in the vendor-payee until the note is paid, is not conditional. Whitlock v. Auburn Lumber Co. (N. C.), 58 S. E. 909.

A note stipulating that it is "subject to conditions of hotel purchase contract of even date herewith," is non-negotiable, and an indorsee takes the same subject to all legal defenses existing in favor of the maker at the time of an action thereon. Rieck v. Daigle, 117 N. W. 346, (N. D. 1908).

Laws 1903, p. 238, § 3, Subd. 2, provides that an unqualified order or promise to pay is "unconditional" within the meaning of this act, though coupled with a statement of the transaction which gives rise to the instrument. Held that paper containing an order or contract for goods, and a note promising to pay for them is not a negotiable instrument, when if the note be detached, the order for goods would be destroyed. State v. Milton, 117 N. W. ——, (Mont. 1908).

Construing corresponding provisions in English Bills of Exchange Act: 3 (3) Crafton v. Crafton, 33 Ch. Div. 612.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Particular fund or account: First Nat. Bank of Hutchinson v. Lightner, 74 Kans. 736; Nichols v. Ruggles, 76 Me. 27; Redmond v. Adams, 51 Me. 433; Shepard v. Adams, 179 Mass. 300; Whitney v. Eliot National Bank, 137 Mass. 351; Schnittler v. Simon, 101 N. Y. S. 554, 560; Munger v. Shannon, 61 N. Y. 251, 255; Maclead v. Luse, 2 Stra. 762; 2 Ld. Rayn 1481; Ellett v. Britton, 6 Tex. 229; Corbett v. Clark, 45 Wis. 403.

2a—Transaction: Robert v. Jacks, 31 Ark. 517; Herth v. Meyer, 33 Ind. 511; Siegel v. Chicago Trust and Savings Bank, 131 Ill. 569; Wells v. Bringham, 6 Cush. (Mass.) 6; Third Nat. Bank v. Bowman, 50 App. Div. (N. Y.) 66; Mott v. Havana Nat. Bank, 22 Hun 354; First Nat. Bank v. Michael, 96 N. C. 53; Murphy v. Corey, 108 Mich. 184; Choate v. Stevens, 116 Mich. 28; Post v. Kinzus Heinlock Ry. Co., 171 Pa. St. 615; Chicago Railway Equipment Co. v. Merchants Nat. Bank, 136 U. S. 268.

3a—To pay out of particular fund: West v. Forman, 21 Ala. 400; National Savings Bank v. Cable, 73 Conn. 568; Killey v. Bronson, 26 Minn. 359; Munger v. Shannon, 61 N. Y. 251; Parker v. City of Syra-

cuse, 31 N. Y. 376; Lowery v. Steward, 25 N. Y. 239; Gawken v. De Loraine, 3 Wils. 207; Norton v. Naylor, 1 Hill 583; Hoglan v. Erck, 11 Neb. 580; Averetts Alm v. Booker, 15 Gratt. 163. But see Corbett v. Clark, 45 Wis. 403; Price v. Jones, 105 Ind. 543.

§ 23 (4). Determinable future time; what constitutes. An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight;[1a] or

2. On or before a fixed or determinable future time specified therein;[2a] or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.[3a]

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.[4a]

See text, § 49.

Cross sections: 20 (1), 320 (184), 20 (1-3), 26 (7-1), 131 (71), 133 (73).

The Wisconsin act (No. 1675-4) substitutes, for the last paragraph, the following: "4. At a fixed period after date or sight, though payable before then on a contingency. An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect, except as herein provided."

This section construed: Union Stockyards Nat. Bank v. Bolan, (Idaho), 93 Pac. 508; Torpey v. Tebo, 184 Mass. 307, 68 N. E. 223; Schlesinger v. Schultz, 110 App. Div. 356, 96 N. Y. S. 383; Thorpe v. Mindeman, 123 Wis. 149, 101 N. W. 417.

Construing corresponding provision of English Bill of Exchange Act: 11 (1), (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—At a fixed period after date or at sight: Siegal v. Chi. Trust & Savings Bank, 131 Ill. 569.

2a—On or before: Keskadden v. Allen, 7 Colo. 206; Chulton v. Reed, 61 Ia. 166; Smith v. Ellis, 29 Me. 422; Mattison v. Marks, 31 Mich. 421; Helwer v. Krolick, 36 Mich. 371; Jordan v. Fate, 19 Ohio St. 586; Riker v. Sprague Mfg. Co., 14 R. I. 402; Albertson v. Laughlin, 173 Pa. St. 525; Ernst v. Steckman, 74 Pa. St. 13; Buchanan v. Wren, — Texas —, 30 S. W. 1077; Ackley School District v. Hall, 113 U. S. 135, 140.

3a—After event certain to happen. After death of maker: Bristol v. Warner, 19 Conn. 7; Price v. Jones, 105 Ind. 544; Husband v. Epling, 81 Ill. 172; Shaw v. Camp, 160 Ill. 425, 43 N. E. 608; Smith v. Van Blancom, 45 Mich. 371; First Nat. Bank v. Carson, 60 Mich. 432; Martin v. Stone, 67 N. H. 367; Mortee v. Edwards, 20 La. Ann. 236; Hegeman v. Moon, 131 N. Y. 462, 30 N. E. 487; Jones v. Isler, 3 Kan.

128; Carnwright v. Gray, 127 N. Y. 92; Ubsdell v. Cunningham, 22 Mo. 124.

Uncertain events of age: Goss v. Nelson, Burr, 226; Rice v. Rice, 43 App. Div. (N. Y.), 458, 60 N. Y. S. 97.

Arrival of ship: Grant v. Wood, 12 Gray. 220; Coolidge v. Ruggles, 15 Mass. 387; Andrews v. Franklin, 1 Str. 24; Evans v. Underwood, 1 Wils. 262.

After marriage: Peason v. Garrett, 4 Mod. 242.

4a—Contingency: First Nat. Bank v. Alton, 60 Conn. 402; Kelley v. Hemmingway, 13 Ill. 604; Farmer v. Bank of Graettinger, 130 Iowa 469; Goss v. Nelson, 1 Burr. 226; Duffield v. Johnston, 95 N. Y. 369; Carlos v. Fancourt, 5 T. R. 482.

§ 24 (5). Additional provisions not affecting negotiability. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:[1]

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity;[1a] or

2. Authorizes a confession of judgment if the instrument be not paid at maturity;[2a] or

3. Waives the benefit of any law intended for the advantage or protection of the obligor;[3a] or

4. Gives the holder an election to require something to be done in lieu of payment of money.[4a]

But nothing in this section shall validate any provision or stipulation otherwise illegal.

See text, § 51.

The North Carolina act (No. 197) contains the following as relating to subdivision 2 above: "That nothing in this act shall authorize the enforcement of an authorization to confess judgment or a waiver of homestead or personal property exemptions or a provision to pay counsel fees for collection incorporated in any instrument mentioned in this act; but the mention of such provision in such instrument shall not affect the other terms of such instruments or the negotiability thereof."

Kentucky omits subdivision 3 above.

The Wisconsin act (No. 1675-5) adds: "or authorize the waiver of exemptions from execution."

1—This section construed:

Authorizing a confession of judgment, whether due or not, is not negotiable: Wisconsin Yearly Meeting v. Babler, 115 Wis. 289, 91 N. W. 678; Milton Nat. Bank v. Beaver, 25 Pa. Superior, 494.

On the general application of the section, see, Thorpe v. Mindeman (Wis.), 101 N. W. 417.

See First National Bank of Pomeroy v. Buttery, (N. D.) 116 N. W. 341.

Construing corresponding provisions in English Bills of Exchange Act: 3 (2) Bavins v. London & S. W. Bank (1900), 1 Q. B. 270, 83 (3), 16 (2); Kirkwood v. Carroll, 72 L. J. K. B. 208.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Collateral security: Bugler v. Merchants' Loan & Trust Co., 62 Ill. App. 560; Heard v. Nebraska, 8 Neb. 16; Goss v. Emerson, 23 N. H. 38; Arnold v. Rock Run Valley Union R. R. Co., 5 Duer. 207; Costello v. Crowell, 127 Mass. 293; Perry v. Biglow, 128 Mass. 129; Towne v. Rice, 122 Mass. 67; Valley Nat. Bank v. Crowell, 148 Pa. St. 284, 23 Atl. 1068; Wise v. Charlton, 4 A. & E. 786.

2a—Confession of judgment: Minaford v. Tolman, 157 Ill. 258, 41 N. E. 617; Gilmore v. Hirst, 56 Kan. 626, 44 Pac. 603; Sweeney v. Thickstum, 77 Pa. St. 131; Conrad Seipp Brewing Co. v. McKittrick, 86 Mich. 191; Overton v. Tyler, 3 Pa. St. 346; Osborn v. Hawley, 19 Ohio 130; Clements v. Hull, 35 Ohio St. 141.

3a—Benefit of laws: First Nat. Bank v. Slaughter, 98 Ala. 602; Walker v. Woolen, 54 Ind. 164; Lyon v. Martin, 31 Kan. 411; Zimmerman v. Rote, 75 Pa. St. 188; Zimmerman v. Anderson, 67 Pa. St. 421; Hughitt v. Johnson, 28 Fed. 865.

4a—Holder's election: Mosley v. Walkin, 84 Ga. 274; Owen v. Barnum, 7 Ill. 461; Hodges v. Shuler, 22 N. Y. 114; Hosstatler v. Wilson, 30 Barb. 307; Dusmon v. Duncan, 57 N. Y. 573.

To be negotiable must not contain an order or promise to do any act in addition to payment of money: Killam v. Schoeps, 26 Kan. 310; Bunker v. Athean, 35 Me. 364; Humphrey v. Buckwith, 48 Mich. 151; Leonard v. Mason, 1 Wend. 522; Cook v. Satterlee, 6 Cow. 108; First Nat. Bank v. Greenville Nat. Bank, 84 Tex. 40; Davis v. Wilkinson, 10 A. & E. 98.

Agreement to pay taxes: Walker v. Thompson, 108 Mich. 686; Carmosy v. Crane, 110 Mich. 508; Cox v. Cayon, 117 Mich. 599.

§ 25 (6). Omissions; seal; particular money. The validity and negotiable character of an instrument are not affected by the fact that

1. It is not dated;[1a] or
2. Does not specify the value given, or that any value has been given therefor;[2a] or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal;[3a] or
5. Designates a particular kind of current money in which payment is to be made.[4a]

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

See text, §§ 51, 54, 43, 50, 58.

Cross sections: 32 (13), 50 (24), 115 (65), 36 (17), 22 (3), 54 (93), 137 (225), 330, 331.

1—This section construed: Church v. Stevens, 56 Misc. R. 572, 107 N. Y. S. 310; McLeod v. Hunter, 29 Misc. R. 558, 61 N. Y. S. 73.

Check payable in "Current Funds" is not negotiable: Dille v. White, 132 Iowa 327, 109 N. W. 909.

A recital in a title retaining note that the title to the property for which it is given shall remain in the payee and he shall have the right to take possession on default, or when he deems himself insecure, renders such note non-negotiable under Session Laws 1903, pp. 380, 381, §§ 1, 5, relating to Neg. Inst.; Kimpton v. Studebaker Bros. Co. (Idaho 1908), 94 Pac. 1039.

Construing corresponding provision in English Bills of Exchange Act: 3 (4), 91 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Dated: Huston v. Young, 33 Me. 85; Michigan Ins. Co. v. Leavensworth, 30 Vt. 11; Alwich v. Downey, 45 Minn. 460, 48 N. W. 197; Cowing v. Allman, 71 N. Y. 435; Biggs v. Piper, 86 Tenn. 589; Husbrook v. Miller, 1 Pin (Wis.) 643.

2a—Value given: See Bristol v. Warner, 19 Conn. 7; Edgerton v. Edgerton, 8 Conn. 6; Mehlberg v. Fisher, 24 Wis. 607.

3a—Seal: Math v. Dolfield, 43 Md. 466; Jackson v. Myers, 43 Md. 452; Morris Canal, etc., Co. v. Fisher, 9 N. J. Eq. 699; Chase Nat. Bank v. Faurot, 149 N. Y. 532; Weeks v. Esler, 143 N. Y. 374; Dinsmore v. Duncan, 57 N. Y. 573; Bank of Rome v. Village of Rome, 19 N. Y. 20; Mercer County v. Hacket, 1 Wall. 83; Brainard v. N. Y. & H. R. R. Co., 25 N. Y. 496; Mason v. Frick, 105 Pa. St. 162; Bank v. R. R. Co., 5 S. C. 156; Mackey v. St. Mary's Church, 15 R. I. 121; National Exchange Bank v. Hartford P. & F. R. Co., 8 R. I. 375; Marine Mfg. Co. v. Bradley, 105 U. S. 175. *Contra*, Canine v. Junction and B. R. R. Co., 3 Houst. (Del.) 789.

Under the law merchant an instrument bearing a seal was non-negotiable: Muse v. Dantzler, 85 Ala. 359; Rowsom v. Davidson, 49 Mich. 607; Brown v. Jordhol, 32 Minn. 135; Clark v. Farmers' Mfg. Co., 15 Wend. 256; Hopkins v. Ry. Co., 3 Watts & S. 410; Laidley's Adm. v. Bright's Adm., 17 W. Va. 779; Parkinson v. McKin, 1 Pin. (Wis.) 214; Platt v. The Sauk County Bank, 17 Wis. 222; Ford v. Mitchell, 15 Wis. 304.

Current funds: "Wright" v. Hart's Admr., 44 Pa. St. 454.

4a—Current money: William v. Moseley, 2 Fla. 304; Johnson v. Frisbie, 15 Mich. 286; Black v. Ward 27 Mich. 191; Chrysler v. Greswold, 43 N. Y. 209; Judoh v. Harris, 19 Johns. 144. See Klanber v. Biggerstoff, 47 Wis. 551; Lindsey v. McClelland, 18 Wis. 481.

§ 26 (7). When payable on demand. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation;[1, 1a] or

2. In which no time for payment is expressed.[2, 2a]

Where an instrument is issued, accepted or indorsed when overdue,[3a] it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

See text, § 47.

Cross sections: 131 (71), 133 (73), 36 (17-5), 50 (24).

This section construed:

1—Demand: Schlesinges v. Schultz, 110 App. Div. 356, 96 N. Y. S. 383; Hardin v. Dixon, 77 App. Div. 241, 78 N. Y. S. 106.

2—Time of payment expressed: Didato v. Coniglio, 50 Misc. R. 280, 100 N. Y. S. 466; McLead v. Hunter, 29 Misc. R. 558, 61 N. Y. S. 73.

Construing corresponding provisions in the English Bills of Exchange Act: 10 (1), (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Demand and sight: Hart v. Smith, 15 Ala. 807; Cribbs v. Adams, 13 Grey 597; Lucas v. Ladew, 28 Mo. 342; Thornton v. Emmumons, 23 W. Va. 325; Walsh v. Dart, 12 Wis. 635.

On demand, at sight, on presentation, snyonyms: Bowman v. McChancey, 22 Gratt. 609.

When paper is payable on demand suit may be brought at once without demand: Peninsular Savings Bank v. Hosie, 112 Mich. 351; Citizens' Savings Bank v. Vangham, 115 Mich. 156.

As to statute of limitation running against paper payable on demand: Palmer v. Palmer, 36 Mich. 487; In re Estate of King, 94 Mich. 411; Curran v. Witter, 68 Wis. 16.

2a—No time expressed: Keyes v. Feustermaker, 27 Cal. 329; Holmes v. West, 17 Cal. 623; Raymond v. Sellick, 10 Conn. 485; Bacon v. Page, 1 Conn. 405; Bank v. Price, 52 Iowa 530; Porter v. Porter, 51 Me. 376; Libby v. Mekelbarc, 28 Minn. 38; Mitchell v. Easton, 37 Minn. 335, 33 N. W. 910; Roberts v. Snow, 28 Neb. 425; Dodd v. Denny, 6 Oregon 156; Messmere v. Morrison, 172 Pa. St. 300, 34 Atl. 45; Hall v. Toby, 110 Pa. St. 318; Jones v. Brown, 11 Ohio St. 601; Koehning v. Muemminghoff, 61 Mo. 403; Collins v. Trotter, 81 Mo. 278; Roberts v. Snow, 28 Neb. 425; Gaylord v. VanLoan, 15 Wend. 308; Thompson v. Ketcham, 8 Johns. 146; Herrick v. Bennett, 8 Johns. (N. Y.) 374; Sheldon v. Heaton, 88 Hum. 535; Self v. King, 28 Texas 552; Bowman v. McChesney, 22 Gratt. 609.

3a—Issued, accepted or indorsed when overdue: French v. Jarvis, 29 Conn. 353; Benis v. McKenzie, 13 Fla. 553; Light v. Kingsbury, 50 Mo. 331; Berry v. Robinson, 9 John 121; St. John v. Roberts, 31 N. Y. 441; Leavitt v. Putnam, 1 Sandf. 199; Bassonhorst v. Wilby, 45 Ohio St. 336; Smith v. Caro, 9 Oregon 280.

Equivalent to drawing a new instrument: Bishop v. Dexter, 2 Conn. 419; Mudd v. Harper, 1 Md. 110; Van Hoosen v. Van Alstyne, 9 Wend. 79; Polle v. Tolleson, 1 N. C. Cord 200; Eisenlord v. Dillenback, 15 Hun (N. Y.) 23; Brown v. Hull, 33 Gratt. 23; Patterson v. Todd, 18 Pa. St. 420; Rosson v. Carroll, 90 Tenn. 90. See French v. Jarvis, 29 Conn. 353.

§ 27 (8). When payable to order. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order.[1a] It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or
2. The drawer or maker;[2a] or
3. The drawee;[3a] or
4. Two or more payees jointly;[4a] or

5. One or some of several payees;[5a] or

6. The holder of an office for the time being.[6a]

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.[7a]

See text, §§ 37, 46, as to holder of office.

Cross section, 320 (184). Sub. Sec. 2 "Drawee" by mistake in original New York Act.

Construing corresponding provision of English Bills of Exchange Act: 8 (4) Meyer v. Deeroix (1891), A. C. 520; 8 (5); 5 (1) Chamberlain v. Young (1893), 2 Q. B. 206; 7 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—When payable to the order of a specified person or to him on his order: Carnwright v. Gray, 127 N. Y. 92; Maule v. Crawford, 14 Hun 193; Bank v. Apperson, 4 Fed. 25; Smith v. Kendall, 6 T. R. 123, 1 Esp. 231.

2a—When payable to drawer or maker: Pickering v. Cording, 92 Ind. 306, 47 Am. Rep. 145; Moses v. Bank, 149 U. S. 298.

3a—When payable to drawee: Commonwealth v. Butterick, 100 Mass. 12; Witte v. Williams, 8 S. C. 290; Wildes v. Savage, 1 Story 22, Fed. Cas. No. 7653.

4a—When payable to two or more payees jointly: Tisdale v. Maxwell, 58 Ala. 40; Gordon v. Anderson, 83 La. 224.

5a—Payable to one or some of several payees: Musselman v. Oakes, 19 Ill. 81; Walrad v. Petrie, 4 Wend. 575; Carpenter v. Farnsworth, 106 Mass. 561; Blanchenhogen v. Blundell, 2 B. and Ald. 417. But see, Spaulding v. Evans, 2 McLean 139, Fed. Cas. No. 13216; Record v. Chisum, 25 Tex. 348; Watson v. Evans, 1 Hurt. & Colt. 663.

6a—Payable to holder of office: Davis v. Garr, 6 N. Y. 124; Storm v. Sterling, 3 El. & Bl. 832; Holmes v. Jacques, 1 Q. B. 376.

7a—Payee must be indicated: Blackman v. Lehman, 63 Ala. 547; Moody v. Threlheld, 13 Ga. 55; Adams v. King, 16 Ill. 169; Knight v. Jones, 21 Mich. 161; Gordon v. Linsing State Bank, 133 Mich. 143; United States v. White, 2 Hill 59.

§ 28 (9). When payable to bearer. The instrument is payable to bearer:[1]

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer;[1a] or

3. When it is payable to the order of a fictitious or non-existing person, and such fact was known[2] to the person making it so payable;[2a] or

4. When the name of the payee does not purport to be the name of any person;[3a] or

5. When the only or last indorsement is an indorsement in blank.[3, 4a]

See text, § 46.

Cross sections: 60 (30), 64 (34), 35 (16), 95 (56), 205 (124), 2 (191).

This section construed:

1—In Seaboard Nat. Bank v. Bank of America, 51 Misc. R. 103, 100 N. Y. S. 740, 85 N. E. 829, held, that knowledge of the drawer of the fictitious or non-existing character of the payee controls, not the knowledge of the person at whose request the draft is drawn. See cases cited under § 23 (4).

In an action on a check payable to cash, the production of the check is *prima facie* evidence of ownership: Cleary v. DeBeck Co., 54 Misc. R. 537, 104 N. Y. S. 831.

A note payable to order of the maker becomes payable to bearer on indorsement in blank by the maker, and may be transferred by delivery: Roach v. Sanborn Land Co., Wis. 1908, 115 N. W. 1102.

If an instrument is knowingly made payable to the order of a fictitious person the instrument is negotiable without indorsement and may be treated as payable to bearer: Boles v. Harding, (Mass. 1909), 87 N. E. 481.

2—Proof of knowledge by maker not required: Boles v. Harding (Mass. 1909), 87 N. E. 481.

Snyder v. Corn Exchange Bank, 221 Pa. 599, 70 A. 876.

3—Indorsement in blank: Mass. Nat. Bank v. Snow, 187 Mass. 159, 72 N. E. 959; Unaka Nat. Bank v. Butler, 113 Tenn. 574, 83 S. W. 655.

Construing corresponding provisions of English Bills of Exchange Act: 8 (3), 7 (3); Bank of England v. Vagliano (1891), A. C. 107; Clutton v. Attenborough (1897), A. C. 90; Vinden v. Hughes, 1 K. B. 795; Macbeth v. North & South Wales Bank (1908), K. B. 13; North and South Wales Bank v. Macbeth, 77 L. J. K. B. 464, 98 L. T. 470; 24 L. T. R. 397.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Payable to bearer when payable to person named thereon or bearer: Eddy v. Bond, 19 Me. 461; Bitzer v. Wagar, 83 Mich. 223; Putnam v. Crymes, 1 McMullen (S. C.), 936 Am. Dec. 250.

2a—When payable to fictitious persons cannot be treated as payable to bearer unless maker knows payee to be fictitious: First Nat. Bank v. Farmers' Bank, 56 Neb. 149; Shipman v. Bank of the State of N. Y., 126 N. Y. 318; Lewisohn v. The Kent & Stantley Co., 87 Hun 257; Armstrong v. Bank, 46 Ohio St. 412; Chism v. Bank, 96 Tenn. 641; Tatlock v. Haines, 3 T. R. 174.

Contra: Meridian Bank v. First Nat. Bank, 7 Ind. App. 322, 33 N. E. 247, 34 N. E. 608; Lane v. Kreeble, 22 Iowa 404; Kohn v. Watkins, 26 Kan. 691.

3a—When payee does not purport to be name of any person: McIntosh v. Lytle, 26 Minn. 336, 3 N. W. 983, 37 Am. Rep. 410; Willets v. Phoenix Bank, 2 Duer 121; Mechanics Bank v. Stratton, 2 Keys 365.

4a—When last indorsement blank: Curtis v. Sprague, 51 Col. 239; Howry v. Eppinger, 34 Mich. 29; Watervliet Bank v. White, 1 Den. (N. Y.) 608.

§ 29 (10). Terms, when sufficient. The instrument need not follow the language of this act, but any terms are sufficient

which clearly indicate an intention to conform to the requirements hereof.[1a]

See text, § 40.

Cross section: 36 (17).

Idaho, Iowa and Wyoming insert the word "negotiable" between the words "The" and "instrument" above.

The Wisconsin act (No. 1675-10) adds to this section the following words: "Memoranda upon the face or back of the instrument, whether signed or not, material to the contract, if made at the time of delivery, are part of the instrument, and parol evidence is admissible to show the circumstances under which they were made."

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Hussy v. Winslow, 59 Me. 170; Debebran v. Gala, 64 Md. 262, 265; Leonard v. Mason, 1 Wend. 522; Brown v. Butchers' Bank, 6 Hill, 443; Gary v. Physic, 5 B. & C. 234.

As to certificate of deposit, see First Nat. Bank v. Greenville Nat. Bank, 84 Tex. 40.

§ 30 (11). Date, presumption, as to. Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance or indorsement, as the case may be.[1a]

See text, § 43.

Construing corresponding provisions of English Bills of Exchange Act: 13 (1).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Wagner v. Kenner, 2 Rob. (La.) 120; Myrbury v. Berkery, 102 Mich. 126; Hill v. Dunham, 7 Gray 543; Cowing v. Altman, 7 N. Y. 441; Anderson v. Weston, 8 Scott 583.

§ 31 (12). Ante-dated and post-dated. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.[1a]

See text, § 43.

Missouri act uses word "valid" instead of "invalid," a clerical error.

Construing corresponding provision of English Bills of Exchange Act: 13 (2) A post-dated check is not invalid; Royal Bank v. Tottenhan (1894), 2 Q. B. 715; Hitchcock v. Edwards, 60 L. T. Rep. 636.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Gatty v. Fry, 2 Ex. D. 265, 36 L. T. (N. S.) 182; Pasmore v. North, 13 East

517; New York Iron Mine v. Citizens' Bank, 44 Mich. 344; Brewster v. McCardle, 8 Wend. 478.

An instrument falsely dated to evade the law is void as to all persons with notice: Serle v. Norton, 9 M. & W. 309; Bayley v. Taber, 5 Mass. 286.

Also void if its purpose is to effect a fraudulent design: Vail v. VanDoren, 45 Neb. 450, 63 N. W. 787; Lansing v. Gaine, 2 Johns (N. Y.) 300.

§ 32 (13). When date may be inserted. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not void the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.[1a]

See text, § 43.

Cross section: 33 (14).

Construing corresponding provision of English Bills of Exchange Act: Section 12.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Androscoggin v. Kimball, 10 Cush. 373; First State Savings Bank v. Webster, 121 Mich. 149; Mitchell v. Culver, 7 Cow. 336; Redlich v. Doll, 54 N. Y. 238; Page v. Monell, 3 Abb. C. App. Dec. 433.

Contra: Inglish v. Breneman, 5 Ark. 377.

§ 33 (14). Blanks, when may be filled. Where the instrument is wanting in any material particular, the person in possession thereof has a *prima facie* authority to complete it by filling up the blanks therein.[1, 1a] And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a *prima facie* authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it[2a] as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

See text, § 58.

Cross sections: 205 (124), 206 (125), 116 (66), 180 (109), 200 (119-5), 91 (52), 34 (15).

The Wisconsin act (No. 1675-14) reads, "complete it prior to negotiation by filling," etc., instead of "complete it by filling," etc.

The Wisconsin act reads, "operates as an authority," etc., instead of "operates as a *prima facie* authority."

The Kentucky act says "negotiable" instead of "negotiated."

1—This section construed:

Stanley v. Davis (Ky.), 107 S. W. 773; First Nat. Bank v. Gridley, 112 App. Div. 398, 98 N. Y. 445.

Purchasers of negotiable instrument with an unfilled blank: Boston Steel & Iron Co. v. Steuer, 185 Mass. 140, 66 N. E. 646 amount; Guerrant v. Guerrant, 7 Va. L. Reg., 639 payee.

A note with blanks filled out in excess of authority granted, given in payment of a debt has not been negotiated and it is not held in due course: Herdman v. Wheeler (1902), 1 K. B. 361, followed; Vanderploeg v. Van Zunk (Iowa), 112 N. W. 807.

Check in payment of debt, payee holder in due course: Boston Steel & Iron Co. v. Steuer, 183 Mass. 140, 66 N. E. 646; Lloyds Bank v. Cooke, 1 K. B. 794.

Construing corresponding provision of English Bills of Exchange Act: 20 (1), (2); Herdman v. Wheeler, 1 K. B. 361; Jenkins and Sons v. Cromber, 67 L. J. Q. B. 780.

Plaintiff knowing that the notes signed in blank had been left with payer's attorney under power of attorney he should have made inquiries as to his authority: Smith v. Prosser (1907), 2 K. B. 735.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Possessor of instruments has *prima facie* authority to fill in the blanks: Bank of Pittsburg v. Neal, 22 How. (U. S.) 107; Norwick Bank v. Hyde, 13 Conn. 281; Depauw v. Bank, 126 Ind. 553, 25 N. E. 705, 26 N. E. 151; Hallen v. Davis, 59 Iowa 444; Elliot v. Chestnut, 30 Md. 562; Market Nat. Bank v. Sargent, 85 Me. 349; Boyd v. McCann, 10 Md. 118; Ives v. Farmers' Bank, 2 Allen (Mass.) 236; Bradford Nat. Bank v. Taylor, 75 Hun 297, 27 N. Y. S. 96; Russell v. Langstaffe, 2 Doug. 514 (leading case); Ovrick v. Colston, 7 Gratt. 189; Frank v. Loloenfield, 33 Gratt. 377; Weidman v. Symes, 120 Mich. 657; Androscoggin Bank v. Kindall, 10 Cush. 373; Weyerhauser v. Dunn, 100 N. Y. 150; Shreyes v. Hawkes, 22 Ohio St. 308, 315; Chestnut v. Chestnut, 104 Va. 539; Violett v. Patton, 5 Cranch. 142; Angle v. Ins. Co., 92 U. S. 330.

2a—Instrument filled in contrary to agreement but in hands of holder in due course: Norwick Bank v. Hyde, 13 Conn. 284; Redlick v. Doll, 54 N. Y. 234, 238; Van Duzer v. Howe, 21 N. Y. 531.

When the maker carelessly leaves a space that may be filled in he is liable to a *bona fide* holder if such space is actually filled in: Yocum v. Smith, 63 Ill. 321; Boyd v. McCann, 10 Md. 118; First Savings Bank v. Webster, 121 Mich. 149; Holmes v. Trumper, 22 Mich. 427; Mitchell v. Culver, 7 Cow. 336; Kitchen v. Place, 41 Barb. 465; Page v. Morrel, 3 Abb. Dec. (N. Y.) 433; Van Etta v. Evenson, 28 Wis. 33;

Johnston Harvester Co. v. McLean, 57 Wis. 258; Bank of Pittsburg v. Neal, 22 How. (U. S.) 96; Genard v. Lewis, 10 Q. B. D. 30; Cruchley v. Clarance, 2 M. & S. 90; Harvey v. Cane, 34 L. T. (N. S.) 64.

§ 34 (15). Incomplete instrument not delivered. Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.[1a]

See text, § 53.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Boston Steel & Iron Co. v. Steuer, 183 Mass. 140; Davis Sewing Machine Co. v. Best, 105 N. Y. 59, 67; Ledgwick v. McKim, 53 N. Y. 307, 313; Hodge v. Smith, 130 Wis. 326; Baxendale v. Bennett, L. R. 3 I. B. 525 (1878), 47 L. J. Q. B. 624.

§ 35 (16). Delivery; when effectual; when presumed. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto.[1, 1a] As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed.[2a] And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.[3a]

See text, § 53.

Cross sections: 34 (15), 114 (64-1), 180 (109), 95 (56), 28 (9-5), 95 (56), 205 (124), 2 (191), 90 (51), 323 (187), 91 (52-3), 94 (55).

The North Carolina Act (Sec. 16) omits "accepting" in the second sentence.

Kansas omits next to the last sentence.

1—This section construed: Stuffer v. Curtis, — Mass. —, 85 N. E. 180; Jaumesster v. Kuntz (Fla.), 42 So. 886; Borough of Montvale v. People's Bank (N. J.), 67 Atl. 67; Colborn v. Arbican, 54 Misc. R. 623, 104 N. Y. S. 986; Moak v. Stevens, 45 Misc. R. 147, 91 N. Y. S. 903; Viets v. Silver (N. D.), 106 N. W. 35.

Negotiable note indorsed in blank by payee and stolen from him:

Mass. Nat. Bank v. Snoe, 187 Mass. 159, 72 N. E. 959; Poess v. Twelfth Ward Bank, (check) semble, 43 Misc. R. 45, 86 N. Y. S. 857; Gruser v. Sugarman, 37 Misc. R. 799, 76 N. Y. S. 922 (action against maker-payee).

Admission of evidence to show that there was a conditional agreement admissible as against parties not holders in due course; Hodge v. Smith, 130 Wis. 326, 110 N. W. 192; Key v. Usher (Ky.), 99 S. W. 324.

Where plaintiff was an indorsee of a check in due course, with all the rights appertaining to such title, it was no defense against him that the check had been unlawfully put in circulation by the defendant's clerk without authority: Buzzell v. Tobin (Mass. 1909), 86 N. E. 923.

Construing corresponding provision of English Bills of Exchange Act: 21 (1), (2), (3); 21 (1) Dawson v. Isle (1906), 1 Ch. 633; 21 (2) New London Credit Syndicate v. Neale (1898), 2 Q. B. 487.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Negotiable instrument has no valid existence until delivery: Burson v. Huntington, 21 Mich. 416; Cox v. Troy, 5 B. & Ald. 474; Baxendale v. Bennett, 3 Q. B. D. 525.

Act and intent must concur: Drum v. Benton, 13 App. Cas. (D. C.) 245; Purviance v. Jones, 120 Ind. 162, 21 N. E. 1099.

Conditional delivery: Burns & Smith Lumber Co. v. Doyle, 71 Conn. 742, 43 Atl. 483; Merchants' Bank v. Luckow, 37 Minn. 542; Central Savings Bank v. O'Connor, 132 Mich. 578; Juillard v. Chaffee, 92 N. Y. 529; Stewart v. Anderson, 59 Ind. 375; Burke v. Dulaney, 153 U. S. 228; Hill v. Hill, 191 Mass. 253; Bell v. Lord Ingestre, 12 Q. B. 317, 19 L. J. Q. 71.

2a—Valid delivery conclusively presumed in hands of holder in due course; Beman v. Wessels, 53 Mich. 549; National Bank v. Snow, 187 Mass. 159, 72 N. E. 959; Gresser v. Sugarman, 37 Misc. Rep. (N. Y.) 799, 76 N. Y. S. 922.

3a—When possession in another not the signer a delivery is presumed: Hall v. Wortman, 123 Mich. 304; Worth v. Case, 42 N. Y. 362; Newcombe v. Fox, 1 App. Div. (N. Y.) 389, 37 N. Y. Supp. 294.

There can be no delivery in escrow to payee: Garner v. Fite, 93 Ala. 405; Carter v. Moulton, 51 Kans. 9; Jones v. Shaw, 67 Mo. 667.

§ 36 (17). Construction where instrument is ambiguous. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:[1]

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;[1a]

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run,

the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;[2a]

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;[3a]

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;[4a]

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;[5a]

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;[6a]

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.[7a]

See text, § 299.

Cross sections: 114 (64), 113 (63).

The Wisconsin act (No. 1675-17) adds another subdivision, viz.: "8. Where several writings are executed at or about the same time, as parts of the same transactions, intended to accomplish the same object, they may be construed as one and the same instrument as to all parties having notice thereof."

1—This section construed:

Doubt whether instrument is bill or note: Didato v. Coniglio, 50 Misc. R. 280, 100 N. Y. S. 466.

One who signs in the place of the maker's name is not an indorser: Germania Nat. Bank v. Mariner, 129 Wis. 544, 109 N. W. 574.

Evidence admitted to show that corporation signed as surety, Spencer v. Alki Point Transp. Co. (Wash. 1909), 101 Pac. 509.

Instrument signed by more than one person: Ullery v. Brohn, 20 Colo. App. 389, 79 Pac. 180.

Construing corresponding provision in English Bills of Exchange Act: See Sec. 9 (2), 9 (3); Sec. 56, Steele v. McKinley, 5 App. Cas. 754, not changed by B. E. A.; Jenkins v. Coomber (1898), 2 Q. B. 168. See Genie v. Bruce Smith (1907), 2 K. B. 507; 85 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Sum payable is expressed in words and figures: Norwick Bank v. Hyde, 13 Conn. 281; Mears v. Graham, 8 Blkfd. (Ind.) 144; Burnham v. Allen, 1 Gray, 496; Saunderson v. Piper, 5 Bingham N. C. 425; Witty v. Michigan Mut. Life Ins. Co., 123 Ind. 411; Schreyer v. Hawkes, 22 Ohio St. 308; Smith v. Smith, 1 R. I. 388, 53 Am. Dec. 652; Williamson v. Smith, 1 Cold. (Tenn.) 1.

2a—Where neither rate or date from which interest is to be computed is expressed the instrument carries interest at the legal rate from date of execution: Campbell Printing Co. v. Jones, 79 Ala. 475; Bilford v. Beatty, 145 Ill. 414. See also, Paine v. Caswell, 68 Me. 80;

Proctor v. Whitcomb, 137 Mass. 303; Pate v. Gray, Fed. Cas. No. 10794a.

3a—Date of instrument omitted: Kinsley v. Sampson, 100 Ill. 54; Meyouny v. Berkery, 102 Mich. 126; Richardson v. Elliott, 10 Tex. 190.

4a—Conflict between written and printed provisions of an instrument: American Express Co. v. Pinckney, 29 Ill. 392; Miller v. Hannibal & St. Jo. R. R. Co., 90 N. Y. 430.

5a—Doubt as to whether an instrument is a bill or note: Brazelton v. McMurray, 44 Ala. 323; Hasè v. Bumpass, 40 Ark. 547; Funk v. Babbitt, 156 Ill. 408; Planters' Bank v. Evans, 36 Tex. 592; Edis v. Bury, 6 Barn. & Cres. 433; Lloyd v. Oliver, 18 Q. B. 471; Block & Bell, 1 M. & R. 149.

6a—Doubt as to the capacity of the person whose signature appears on the instrument: Walton v. Williams, 44 Ala. 347; Iron City National Bank v. Rafferty, 207 Pa. St. 238; Herring v. Woodhull, 29 Ill. 92.

7a—"I promise to pay instrument" signed by two or more persons: Monson v. Drakeley, 40 Conn. 559; Solomon v. Hopkins, 61 Conn. 47, 23 Atl. 716; Samper Co. v. Locklin, 100 Mich. 339; Dart v. Sherwood, 7 Wis. 523; Cooke v. Brown, 62 Mich. 473; Arbuckle v. Templeton, 65 Vt. 205, 25 Atl. 1095.

§ 37 (18). Liability of person signing in trade or assumed name. No person is liable on the instrument whose signature does not appear thereon except as herein otherwise expressly provided.

But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.[1,1a]

See text, § 44.

Cross sections: 72 (42), 79 (49).

1—This section construed: N. Y. Life Ins. Co. v. Martindale (Kan.), 88 Pac. 559; Seattle Shoe Co. v. Packard, 43 Wash. 527, 86 Pac. 845.

This section has no application to an oral guaranty by the payee: Swenson v. Stoltz, 36 Wash. 318, 78 Pac. 999.

Construing corresponding provisions of English Bills of Exchange Act: 23, (1), (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Liability of person whose signature does not appear on the instrument: Bradlee v. Boston Glass Co., 16 Pick. 347; Sparks v. Transfer Co., 104 Mo. 531; Bruggs v. Partridge, 64 N. Y. 363; Manufacturer's, etc., Bank v. Love, 13 App. Div. (N. Y.) 561, 43 N. Y. S. 812; Anderson v. Shoup, 17 Ohio St. 126; Seattle Shoe Co. v. Packard, 43 Wash. 527.

A person becomes liable by the signature of any mark or name, as a substitute for his own to an instrument: Jones v. Home Furniture Co., 9 App. Div. 103, 41 N. Y. S. 71; Brown v. Butchers' & Drivers' Bank, 6 Hill, 443; Anderson v. Bank, 66 Hun 613, 21 N. Y. S. 925; DeWitt v. Walton, 9 N. Y. 574; Fiore v. Todd, 22 Ore. 202, 29 Pac. 435.

But see Barrett v. Tucker, 104 Mass. 336; Brown v. Parker, 7 Allen, 337.

§ 38 (19). Signature by agent; authority; how shown. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.[1a]

See text, §§ 44, 33.

The Kentucky act reads: "The signature of any party may be made by an agent duly authorized in writing."

Construing corresponding provision of English Bills of Exchange Act: Sec. 91.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Odd Fellows v. Bank, 42 Mich. 461; Sager v. Tupper, 42 Mich. 605; Kennedy v. Graham, Adm., 9 Ind. App. 624, 35 N. E. 925, 37 N. E. 25.

In case of partnership plaintiff must show authorization in case it is disputed: Gooding v. Underwood, 89 Mich. 189.

§ 39 (20). Liability of person signing as agent, etc. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.[1, 1a]

See text, §§ 33, 125.

Cross sections: 36 (17-6), 113 (63), 114 (64).

The Virginia act (§ 20) inserts after "capacity," "without disclosing his principal."

1—This section construed: Germania National Bank v. Mariner, 129 Wis. 544, 109 N. W. 574.

Trustee under will gives note without authority: Tuttle v. First National Bank of Greenfield, 187 Mass. 533, 73 N. E. 560.

Signed as President and Secretary, but not sufficiently disclosing principal: Daniel v. Buttener, 38 Wash. 556, 80 Pac. 811.

Representative capacity not fully disclosed in instrument, but known to payee: Kerby v. Ruegamer, 107 App. Div. 491, 95 N. Y. S. 408; Megowan v. Peterson, 173 N. Y. 1, 65 N. E. 738.

Intention of parties signing uncertain: Western Grocery Co. v. Lackman, — Kan. —, 88 Pac. 527; Dunbar Co. v. Martin, 53 Misc. R. 312, 103 N. Y. S. 91; N. I. L. not cited in these cases.

Construing corresponding provisions of English Bills of Exchange Act: Sec. 26 (1), (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Under the law merchant an agent signing without authority was liable only on his implied warranty that he had such authority: Hall v. Campbell, 29 Cal. 572; Taylor v. Shelton, 30 Conn. 122; Simpson v. Garlan, 76 Me. 203; Bartlett v. Tucker, 104 Mass. 336; Shiffield v. Ladue, 16 Minn. 388; Taylor v. Nostard, 134 N. Y. 108; Miller v. Reynolds, 92 Hun 400; Kroeger v. Pitcairn, 101 Pa. St. 311.

Contra: Dale v. Donaldson, 48 Ark. 188; Byars v. Doores, Adm., 20 Mo. 284; Wern v. Gove, 44 N. H. 196.

But mere addition of words describing him as an agent, but not disclosing the principal does not relieve from liability: Sumwall v. Rigeley, 20 Md. 107; First National Bank v. Wallis, 150 N. Y. 455; McWherter v. Jackson, 10 Humphrey, 208; Casco National Bank v. Clark, 139 N. Y. 307; Emm v. Carroll, 1 Yerger, 144; Carter v. Wolf, 1 Heisk, 674; Tilden v. Barnard, 43 Mich. 376; Bank v. Looney, 9[illegible]7 Tenn. 278. See Kerby v. Ruegamer, 107 App. Div. (N. Y.) 491; Crandall v. Rollin, 83 App. Div. (N. Y.) 618; Dutton v. Marsh, L. R. 6 I. B. 361, 4 Eng. Ruling Cas. 278.

Parol evidence not admissible to show that agent, although he signed as principal, disclosed his principal at time contract was enacted: Nash v. Towne, 5 Wall. 689; Anderson v. Pearce, 36 Ark. 293; Richmond v. Monagre, 119 Ala. 80, 24 So. 824; McClelland v. Robe, 93 Ind. 298; Pugh v. Moore, 44 La. Ann. 209, 10 So. 710; Stinson v. Lee, 68 Miss. 113, 8 So. 272; Penn Mutual Ins. Co. v. Conough, 54 Neb. 124, 74 N. W. 422; Rodger Williams Bank v. Grotor Mfg. Co., 16 R. I. 504, 17 Atl. 170; Chipman v. Foster, 119 Mass. 189; Wis. Trust Co. v. Chapman, 121 Wis. 479; McGan v. Union Co. (Mich.), 99 N. W. 758.

§ 40 (21). Signature by procuration; effect of. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.[1a]

See text, §§ 44, 33.

Construing corresponding provision of English Bills of Exchange Act: Sec. 25.

Signed without authority by agent: Re Cunningham & Co., 36 Ch. D. 532.

Check "per proc.": Reed v. Rigby & Co. (1894), 2 Q. B. 40; Bissell v. Fox, 51 S. T. Rep, 663, affirmed 53 L. T. Rep. 193.

Bill "per proc." the company accepted: West London Commercial Bank v. Kitson, 13 Q. B. D. 360.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: William

v. Conger, 125 U. S. 422; Altword v. Munnings, 7 B. & C. 278, 4 English Rul. Cas. 364; Bryant v. La Banque du Pemple (1813), A. C. 170. See, Reid v. Rigby (1894), 2 I. B. 40.

§ 41 (22). Effect of indorsement by infant or corporation. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.[1, 1a]

See text, §§ 24, 123.

Cross sections: 55 (29), 116 (66).

1—This section construed:
Indorsement by corporation: Willard v. Crook, 21 App. D. C. 237; Opperheim v. Simon Reigel Cigar Co., 9 N. Y. S. 355.

Construing corresponding provision of English Bills of Exchange Act: 22 (2); 22 (2) In re Saltykoff (1891), 1 Q. B. 413.

1a—The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Roach v. Woodhall, 91 Tenn. 206.

§ 42 (23). Forged signature; effect of. Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature unless the party against whom it is sought to enforce such right is precluded from setting up the forgery or want of authority.[1, 1a]

See text, §§ 138, 44, 50.

1—This section construed: Seaboard Nat. Bank v. Bank of America, 85 N. E. 829, (N. Y. 1908); Blum v. Whipple, 194 Mass. 253; 80 N. E. 501; Lonier v. State Sav. Bank, 149 Mich. 483, 112 N. W. 1119; Oriental Bank v. Gallo, 112 App. Div. 360, 98 N. Y. S. 561; Salen v. Bank of State of N. Y., 110 App. Div. 636, 97 N. Y. S. 361; Casey v. Pilkington, 83 N. Y. App. Div. 81; Pettyjohn v. National Exchange Bank, 101 Va. 111, 43 S. E. 203.

One of several signatures forged: Been v. Farrell (Iowa), 113 N. W. 509.

A representing himself to be B obtained, indorsed and cashed at bank check payable to B. Bank liable: Tolman v. American Bank, 22 R. I. 462, 48 Atl. 480. *Contra:* Hoffman v. American Exchange Bank (Neb.), 96 N. W. 112; Heavy v. Commercial Nat. Bank, 27 Utah 222, 75 Pac. 727; Central Nat. Bank v. Nat. Bank (C. C. Dist. Col.), 35 Wash. Law Rep. 621.

Forged draft: Hein v. Neubert (Wash.), 94 Pac. 104.

When the indorsement of the payee of a bill of exchange has been forged, subsequent holders obtain no title to it, and payments made to one who holds under such forged indorsement may be recovered: Trust Co. of America v. Hamilton Bank of N. Y. City, 112 N. Y. S. 84.

The fact that signatures to notes are forged does not preclude an action on the indorsements and guaranties of the notes: Code Supp. 1902, § 3060-a23; State v. Corning State Sav. Bank (Ia. 1908), 115 N. W. 937.

A *bona fide* purchaser can acquire no right or title under a forged indorsement: Warren v. Smith (Utah 1909), 100 Pac. 1069.

Construing corresponding provision of English Bills of Exchange Act: Sec. 24.

Bill payable to a real person not intended by drawer: Bank of England v. Vagliano (1891), A. C. 107.

Check transferred by forged indorsement in Austria laws of Austria control: Embiricos v. Anglo-Austrian Bank (1905), K. B. 677; Kleinwort v. Comptoir National d'Escomplete de Paris (1894), 2 Q. B. 152; Locave v. Creidt Lyonnais (1897), 1 Q. B. 148.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Beattie v. Nat. Bank, 174 Ill. 571, 57 N. E. 602; Whiteford v. Monroe, 17 Md. 135; Lancaster v. Baltzell, 17 G. & J. (Md.) 468; Buckley v. Second Nat. Bank of Jersey City, 35 N. J. Law 400; Compare Land, etc., Co. v. Northwestern Nat. Bank, 196 Pa. St. 230, 60 Atl. 723; Jamieson v. McFarland, 43 Wash. 153; Roberts v. Tucker, 16 Q. B. 560.

Estopped to dispute genuineness of signatures: Count v. De Wolf, 1 R. I. 393. See, Terry v. Bissell, 26 Conn. 41; Leather Manufacturing Nat. Bank v. Morgan, 117 U. S. 96.

Not required at once to disclaim the genuineness of a signature: Trader's National Bank v. Rogers, 167 Mass. 315.

A forged renewal note given for accepted forged note: Central National Bank v. Copp, 184 Mass. 328.

In the following cases it has been held that a forgery may be ratified: Forsythe v. Bonta, 5 Bush Ky. 547; Casco Bank v. Keen, 53 Me. 103; Leaver v. Weston, 163 Mass. 202; Greenfield Bank v. Crafts, 4 Allen 447; Bowlin v. Creel, 63 Mo. App. 229; Ashpitel v. Bryan, 3 B. & S. 492.

Contra: Henry v. Heeb, 114 Ind. 280; Smith v. Tramel, 68 Ia. 488; Workman v. Wright, 33 Ohio St. 405; McHugh v. Co. of Schuylkill, 67 Pa. St. 391; Bldg. and Loan Assn. v. Walton, 181 Pa. St. 201; Brooke v. Hook, 24 I. T. (N. S.) 34.

ARTICLE III.

CONSIDERATION OF NEGOTIABLE INSTRUMENTS.

§ 50 (24). Presumption of consideration.
51 (25). What constitutes consideration.
52 (26). What constitutes holder for value.
§ 53 (27). When lien on instrument constitutes holder for value.
54 (28). Effect of want of consideration.
55 (29). Liability of accommodation party.

Sections 50 to 55 above are the sections of the New York Law.

Sections 24 to 29 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 24 to 29 in the following states and territories: Alabama, Colorado, Connecticut, Florida, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories:

As sections 3327-3332 in R. S. of Arizona; as 1328-1333 in the Code of the District of Columbia; as 31-36 in Kansas and Oregon; as 43-48 in Maryland; as 26-31 in Michigan; as 3171w-3172a in Ohio; as 32-37 in Rhode Island; as 1675-50 to 1675-55 in Wisconsin.

§ 50 (24). Presumption of consideration. Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.[1, 1a]

See text, § 64.

1—This section construed: Bringman v. Von Glahn, 71 N. Y. App. Div. 537, 75 N. Y. Supp. 845; Hickok v. Bunting, 92 N. Y. App. Div. 167. See also Benedict v. Kress, 97 N. Y. App. Div. 65; Bank of Monticello v. Dooly, 113 Wis. 590; Colborn v. Arbecane, 54 Misc. R. 623, 104 N. Y. S. 986; Karsch v. Pottier Co., 82 App. Div. 230, 81 N. Y. S. 782; Black v. Bank of Westminster, 96 Md. 399, 54 Atl. 88; Moak v. Stevens, 45 Misc. R. 147, 91 N. Y. S. 903; Royal Bank v. Goldschmidt, 5 Misc. R. 622, 101 N. Y. S. 101; Lombard v. Byrne, 194 Mass. 236, 80 N. E. 489; Deyo v. Thompson, 53 App. Div. 9, 65 N. Y. S. 459; Cole Banking Co. v. Sinclair, — Utah —, 98 Pac. 411.

Under §§ 50 and 54 of the New York Neg. Inst. Law in an action on notes in the hands of an indorsee, the burden was on defendant to show a want of consideration: Joveshof v. Rockey, 109 N. Y. S. 818.

Where a person becomes a *bona fide* holder for value of a bill of exchange before its acceptance, his right to enforce it against a subsequent acceptor does not depend upon an additional consideration proceeding from him to the drawer: Nat. Park Bank v. Sailta, 111 N. Y. S. 927.

The instrument itself is *prima facie* evidence of consideration: Gilpin v. Savage, 112 N. Y. S. 802.

The acceptor of a bill of exchange is presumed to have accepted it for a valuable consideration: National Park Bank v. Saitla, 111 N. Y. S. 927.

Every negotiable instrument is deemed *prima facie* to have been issued for a valuable consideration, and every person whose signature appears thereon is deemed to be a party thereto for value: Jennings v. Law, — Mass. — (1908), 85 N. E. 157.

Construing corresponding provisions of English Bills of Exchange Act: 30 (1).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Beath v. Chapoton, 124 Mich. 508; Conrad Seipp Brewing Co. v. McKittrick, 86 Mich. 191; Durland v. Durland, 153 N. Y. 67; Bristol v. Warner, 19 Conn. 7; Nat. Sav. Bank v. Cable, 73 Conn. 568, 48 Atl. 428; Louisville R. R. Co. v. Caldwell, 98 Ind. 251; Cowan v. Hollack, 9 Col. 576.

§ 51 (25). Consideration; what constitutes. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.[1, 1a]

See text, §§ 62, 63.

The Wisconsin act (§§ 1675-51) inserts after "debt," "discharged, extinguished or extended," and adds at the end of the section: "But the indorsement or delivery of negotiable paper as collateral security for a pre-existing debt, without other consideration, and not in pursuance of an agreement at the time of delivery, by the maker, does not constitute value."

1—This section construed: Commercial National Bank v. Citizens' State Bank, 132 Iowa 706; Petrie v. Miller, 57 N. Y. App. Div. 17, 67 N. Y. Supp. 1042; Mohlman Co. v. McKane, 60 N. Y. App. Div. 546, 69 N. Y. Supp. 1046; Sutherland v. Mead, 80 N. Y. App. Div. 103, 80 N. Y. Supp. 504, 1149; Roseman v. Mahony, 86 N. Y. App. Div. 377, 83 N. Y. Supp. 749; Bank of America v. Waydell, N. Y. App. Div., 92 N. Y. Supp. 666; Milius v. Kauffman, 104 N. Y. App. Div. 442, 93 N. Y. Supp. 669; Brooks v. Sullivan, 129 N. C. 190, 39 S. E. 822; Singer Manufacturing Co. v. Summer, 143 N. C. 102; Elgin City Banking Company v. Hall, Tenn., 108 S. W. Rep. 1068; Payne v. Zell, 98 Va. 294; Boston Steel &

Iron Co. v. Stever, 183 Mass. 140, 66 N. E. 646; Pelton v. Spider Lake Co. (Wis.), 112 N. W. 29; Russell Electric Light Co. v. Bassett, 79 Conn. 709, 66 Atl. 531; Allentown Nat. Bank v. Clay Co., 217 Pa. 128, 66 Atl. 252.

Mindlin v. Appelbaum, 114 N. Y. S. 908.

The difference between a solvent and an insolvent signer of a note is a valuable consideration to another who signs, relying on the financial responsibility of those who are to join as makers. City Deposit Bank v. Green (Ia., 1908), 115 N. W. 893.

Under Acts 1899, p. 146, c. 94, § 25: A bank discounting a note and obtaining credit in favor of the indorser in a solvent bank for the amount of the discounted paper is a holder for value. Elgin City Banking Co. v. Hall (Tenn., 1907), 108 S. W. 1068.

Promissory notes given to plaintiff for pre-existing indebtedness on consideration that defendant, a commercial firm, be allowed to sell their stock to pay other creditors, were for a valuable consideration. Richardson v. Wren (Ariz., 1908), 95, p. 124.

Value is any consideration sufficient to support a simple contract. A pre-existing debt constitutes value. Jennings v. Law (Mass., 1908), 85 N. E. 157. And a demand note held as collateral for such a debt is held for value, Lowell v. Bickford et. al. (Mass. 1909), 88 N. E. 1.

Under Negotiable Instruments Law, laws 1897, p. 727, C. 612, § 51: To constitute value which will support an action against an accommodation maker of a check which has been fraudulently diverted the antecedent debt must have been canceled and discharged on the acceptance of the check, or at the time the payment was extended. Harris v. Fowler, 110 N. Y. S. 987.

Where the payee of a note, on receiving it, paid a specified sum to banks, which the maker owed, there was a valuable consideration for the note. Hermann's Ex'r v. Gregory et al. (Ky., 1909), 115 S. W. 809.

The delivery of a patent to land to the payee of a note is a sufficient consideration for the promise of the latter to extend the time of the payment of the note, since, though the patent is of no value to the payee, it would cause expense on the part of the maker to procure another patent. Drake v. Pueblo Nat. Bank, (Colo. 1908), 96 P. 999.

One having possession of notes indorsed by the payees pledged them by way of substitution for other collateral held by the pledgee for antecedent indebtedness, the pledgee became a holder for value. Voss v. Chamberlain, La. 1908, 117 N. W. 269; Graham v. Smith, 118 N. W. 726, — Mich. —.

An extension of time of payment is sufficient consideration for a note. Timbleman & Otis v. Finnegan (Iowa), 118 N. W. 312. Murchison National Bank v. Dunn Oil Mills Co. (N. C. 1909), 64 S. E. 885.

Construing corresponding provisions of English Bills of Exchange Act: 27 (1), (a) (b).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Black v. Bank of Westminster, 96 Md. 399, 54 Atl. 88; Crawford Co. Bank v. Stegeman (Ia.), 114 N. W. 549; Bigelow Co. v. Automatic Gas Co., 56 Misc. R. 389, 107 N. Y. S. 894; Wallebout Bank v. Peyton, 108 N. Y. S.

42; Brewster v. Schrader, 26 Misc. R. 480, 57 N. Y. S. 606; Wilkins v. Usher (Ky.), 97 S. W. 37; Citizens' Bank v. Bank of Waddy's, Receiver (Ky.), 103 S. W. 249; Trustees of American Bank v. McComb, 105 Va. 473, 54 S. E. 14; Hover v. Magley, 48 Misc. R. 430, 96 N. Y. S. 925; Nat'l Bank v. Foley, 54 Misc. R. 126, 103 N. Y. S. 553; In re Hopper-Morgan Co., 154 Fed. 249; Northfield Nat. Bank v. Arndt (Wis.), 112 N. W. 451; Mattock v. Schenerman (Oregon), 93 Pac. 823.

Valuable consideration: Phelps v. Phelps, 28 Barb. 121; Richardson v. Richardson, 148 Ill. 563, 36 N. E. 608; Eaton v. Libbey, 165 Mass. 218, 42 N. E. 1127.

Sufficient consideration: Stevens v. McLachlan, 120 Mich. 285; Walbridge v. Tuller, 125 Mich. 218.

Lack of consideration: Brown v. Smedley (Mich.), 98 N. W. 856; Nowack v. Lehman (Mich.), 102 N. W. 992.

Whether value when given as collateral security for a pre-existing debt: Swift v. Tyson, 16 Pet. (U. S.) 1; Railroad Co. v. National Bank, 102 U. S. 25; Maitland v. Citizens Nat. Bank, 40 Md. 540; Alexander v. Bank, 19 Tex. Civ. App. 620, 47 S. W. 840; Rockville Nat. Bank v. Citizens' Gas Light Co., 72 Conn. 581; 45 Atl. 361; Dunham v. Peterson, 5 N. Dak. 414, 67 N. W. 293, 57 Am. St. Sup. 556.

Contra: Maynard v. Davis, 127 Mich. 571; Coddington v. Bay, 20 Johns, 636; Thompson v. Muddux, 117 Ala. 468, 23 So. 157; Goodman v. Simonds, 19 Mo. 106; Bone v. Thorp, 63 Ia. 223.

§ 52 (26). What constitutes holder for value. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.[1, 1a]

See text, § 128.

1—This section construed: Black v. Bank, 96 Md. 399, 54 Atl. 88; Petrie v. Miller, 57 N. Y. App. Div. 17, 67 N. Y. Supp, 1042; Brooks v. Sullivan, 129 N. C. 190, 39 S. E. 822; Elgin City Banking Co. v. Hall (Tenn.), 108 S. W. Rep. 1068; Hover v. Magley, 48 Misc. R. 430, 96 N. Y. S. 925; Rodgers v. Morton, 46 Misc. R. 494, 95 N. Y. S. 49.

When value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. Jennings v. Law, 85 N. E. 157 (Mass., 1908).

The surrender of an old note constitutes value. Van Worden, etc., Co. v. Rosenberg, 114 N. Y. S. 1025.

A payee of a note, who on receiving it paid a specified sum to banks which the maker owed, is a holder for value. Hermann's Ex'r v. Gregory (Ky., 1909), 115 S. W. 809.

Construing corresponding provisions of English Bills of Exchange Act: 27 (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Elliott v. Miller, 8 Mich. 131; Hoffman v. Bank, 12 Wall. 181; DeWitt v. Per-

kins, 22 Wis. 451; Griffins v. Kellogg, 39 Wis. 290; Simon v. Merritt, 33 Ia. 527.

§ 53 (27). When lien on instrument constitutes holder for value. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.[1, 1a]

See text, § 128.

1—This section construed: See Sutherland v. Mead, 80 N. Y. App. Div. 103; see Roseman v. Mahony, 86 N. Y. App. Div. 377; see Bank of America v. Waydell, 103 N. Y. App. Div. 25; see. contra, however, Brewster v. Shrader, 26 Misc. (N. Y.) 480; Brooks v. Sullivan, 129 N. C. 190, 39 S. E. 822; Mersick v. Alderman, 77 Conn. 634, 60 Atlantic Rep. 109; Payne v. Zell, 98 Va. 294, 36 S. E. 379; Redfern v. Rosenthal, 85 L. T. 313, 86 L. T. 855 (under section of Bills of Exchange Act); Rodgers v. Morton, 46 Misc. R. 494, 95 N. Y. S. 49; Batterman v. Butcher, 95 App. Div. 213, 88 N. Y. S. 685; Petrie v. Miller, 57 App. Div. 17, 67 N. Y. S. 104, 173 N. Y. 596; Brown v. James (Neb.), 114 N. W. 591.

A person holding a note as collateral security for a pre-existing debt is a holder for value to the extent of the amount due him. Graham v. Smith (Mich.), 118 N. W. 726.

Construing corresponding provisions of English Bills of Exchange Act: 27 (3); 27 (3) Redfern v. Rosenthal, 86 L. T. Rep. 855.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Nat. Bank v. Ins. Co., 104 U. S. 54; Reynes v. Dumont, 130 U. S. 354; Straus v. Tradesman's Nat. Bank, 122 N. Y. 379; Clark v. Bank, 160 Mass. 26; Anderson v. Bank, 98 Mich. 543; Stoddard v. Kimball, 6 Cush. 469.

§ 54 (28). Effect of want of consideration. Absence or failure of consideration is matter of defense as against any person not a holder in due course;[1, 1a] and partial failure of consideration is a defense *pro tanto* whether the failure is an ascertained and liquidated amount or otherwise.[2, 1a]

See text, § 68.

Cross-sections: 91 (52).

This section construed:

1—Lynds v. Van Valkenburgh (Kans.), 96 Pac. 615; Padgett v. Lewis (Fla.), 45 So. 29; Weiss v. Rieser, 114 N. Y. S. 984; Rowe v. Bowman, 183 Mass. 488, 67 N. E. 636; St. Paul's Episcopal Church v. Fields (Conn., 1909), 72 Atl. 145.

2—Partial failure of consideration may be asserted as a defense to a note in the hands of a payee or holder with notice or not for value. City Deposit Bank of Columbus v. Green (Ia., 1908), 115 N. W. 893.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Engl'sh v.

Yore, 123 Mich. 702; Allaire v. Hartshorne, 21 N. J. L. 665; Sutton v. Beckwith, 68 Mich. 303; Farber v. Nat. Forge & Iron Co., 140 Ind. 54, 39 N. E. 249; Union Trust Co. v. Rigdon, 93 Ill. 459; Rice v. Grange, 131 N. Y. 149, 30 N. E. 46; Stacy v. Kemp, 97 Mass. 166; Harness v. Horne, 20 Ind. App. 134, 50 N. E. 395; Shattuck v. Hart, 98 Mich. 559; Greenleaf v. Cook, 2 Wheat. 13; Packwood v. Clark, Fed. Cas. No. 10,656; Wentworth v. Dows, 117 Mass. 14; Davis v. Wait, 12 Ore. 425; Wyckoff v. Runyon, 33 N. J. L. 107.

§ 55 (29). Liability of accommodation party. An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.[1, 1a]

See text, §§ 124, 70.

1—This section construed: Willard v. Cook, 21 App. D. C. 237; Bankers' Iowa State Bank v. Mason Hand Lathe Co., 121 Iowa 570; Black v. First National Bank of Westminster, 96 Md. 399; Rowe v. Bowman, 183 Mass. 488; Middleborough National Bank v. Cole, 191 Mass. 168; People's National Bank v. Schepflin, 73 N. J. Law 29; Strickland v. Henry, 66 N. Y. App. Div. 23, 73 N. Y. Supp. 12; National Citizens' Bank v. Toplitz, 81 N. Y. App. Div. 593, 81 N. Y. Supp. 422; Packard v. Windholz, 88 N. Y. App. Div. 365, 84 N. Y. Supp. 666; Smith v. State Bank, 104 N. Y. Supp. 750; National Bank of Newport v. Snyder Manufacturing Co., 117 N. Y. App. Div. 370; White v. Savage, 48 Oregon 604; Metropolitan Printing Co. v. Springer, 90 N. Y. S. 376; Mersick v. Alderman, 77 Conn. 634, 60 Atl. 109; In re Troy & Cohoes Shirt Co., 136 Fed. 420; Hover & Magley, 96 N. Y. S. 925; Gansevoort Bank v. Gilday, 104 N. Y. S. 271; In re Hopper-Morgan Co., 156 Fed. 525; Lowell v. Bickford et. al. (Mass. 1909), 88 N. E. 1.

Construing corresponding provisions of English Bills of Exchange Act: 28 (1) (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Second Nat. Bank v. Howe, 40 Minn. 390; Patterson v. Bank, 26 Ore. 509, 38 Pac. 818; Dunn v. Weston, 71 Me. 270; Capitol Bank v. Des Moines, etc., 84 Ia. 561, 51 N. W. 33; Whittier v. Eager, 1 Allen (Mass.), 499.

A corporation as a general rule cannot become an accommodation party: Beecher v. Decy, 45 Mich. 92; Steiner v. Steiner Land Co, 120 Ala. 128, 26 So. 494; Bacon v. Farmers' Bank, 79 Mo. App. 406; Worthington v. Schuylkill Electric Co., 195 Pa. St. 211, 45 Atl. 927.

A partner has no implied authority to bind the firm as an accommodation party: Burke v. Wilbur, 42 Mich. 329; National Bank v. Law, 127 Mass. 72; Bank of Fort Madison v. Alden, 129 U. S. 372; Fed. Nat. Bank v. Cross Creek, — Pa. —, 68 Atl. 1018; Oppenheim v. Simon Reigel Cigar Co., 93 N. Y. S. 355; Simpson v. Hefter, 42 Misc. R. 482, 87 N. Y. S. 243; English v. Schlesinger, 105 N. Y. S. 989.

ARTICLE IV.

NEGOTIATION.

§ 60 (30). What constitutes negotiation.
61 (31). Indorsement; how made.
62 (32). Indorsement must be of entire instrument.
63 (33). Kinds of indorsement.
64 (34). Special indorsement; indorsement in blank.
65 (35). Blank indorsement; how changed to special indorsement.
66 (36). When indorsement restrictive.
67 (37). Effect of restrictive indorsement; rights of indorsee.
68 (38). Qualified indorsement.
69 (39). Conditional indorsement.
70 (40). Indorsement of instrument payable to bearer.
§ 71 (41). Indorsement where payable to two or more persons.
72 (42). Effect of instrument drawn or indorsed to a person as cashier.
73 (43). Indorsement where name is misspelled, et cetera.
74 (44). Indorsement in representative capacity.
75 (45). Time of indorsement; presumption.
76 (46). Place of indorsement; presumption.
77 (47). Continuation of negotiable character.
78 (48) Striking out indorsement.
79 (49). Transfer without indorsement; effect of.
80 (50). When prior party may negotiate instrument.

Sections 60 to 80 above are the sections of the New York Law.

Sections 30 to 50 above in parenthesis are the sections used by the commissioners.

The above sections correspond to section 30 to 50 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Tennessee, Utah, Virginia, Washington and Wyoming. In some instances these numbers have been changed by incorporating the act in a code.

They are found as the following sections in the following states and territories: As sections 3333 to 3353 in R. S. of Arizona; as 30 to 50 in Illinois; as 37 to 57 in Kansas and Oregon; as 49 to 69 in Maryland; as 32 to 52 in Michigan; as 30 to 50 in Nebraska; as 3172b to 3172s in Ohio; as 38 to 58 in Rhode Island; as 1676 to 1676-20 in Wisconsin.

§ 60 (30). What constitutes negotiation. An instrument is negotiated when it is transferred from one person to another in

such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.[1, 1a]

See text, § 13.

Cross sections: 2 (191), 27 (8), 28 (9), 36, subd. 6, (17 subd. 6).

1—This section construed: Louisville Co. v. International Trust Co., 18 Col. App. 345; Nat. Bank of Commerce v. Pick, 13 N. D. 74, 99 N. W. 63; Schlesinger v. Kurzrok, 47 Misc. R. 634, 94 N. Y. S. 442; Rogers v. Morton, 46 Misc. 494, 95 N. Y. S. 49; Swenson v. Stoltz, 36 Wash. 318, 78 Pac. 999.

There is nothing in Sec. 60 (30) which prevents the use of a rubber stamp in the indorsement of checks, drafts and notes: Flanders v. Snare, 37 Pa. Super. Ct. 28.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 31 (1), (2), (3).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Blackman v. Lehman, 63 Ala. 547; McFarland v. Sikes, 54 Conn. 250; Dann v. Norris, 24 Conn. 337; Clark v. Sigourney, 17 Conn. 520; Spencer v. Casstarphen, 15 Colo. 445; Garvin v. Wiswell, 83 Ill. 218; Wooley v. Cobb, 165 Mass. 503; Woods Son Co. v. Schaefer, 173 Mass. 443; Ricketts v. Pendleton, 14 Md. 320; Haines v. Dubois, 29 N. J. L. 259; Middleton v. Griffith, 57 N. J. L. 442; Higgins v. Redgeway, 153 N. Y. 130; Persons v. Hawkins, 41 App. Div. (N. Y.) 171; Simmons v. Thompson, 29 App. Div. (N. Y.) 559; Kinzie v. Farmers' and Mechanics' Bank, 2 Doug. (Mich.) 104; National City Bank v. Torrent, 130 Mich. 259; Hust v. Hart, 73 Pa. St. 286; Hodge v. Smith, 130 Wis. 326.

§ 61 (31). Indorsement; how made. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.[1, 1a]

See text, § 97.

Cross sections: 37 (18), 79 (49), 72 (42).
The Illinois Act adds a clause.

1—This section construed: Mayers v. McRemmon, 140 N. C. 640, 53 S. E. 447; First Nat. Bank v. McCullough (Oregon), 93 Pac. 366; Swenson v. Stoltz, 36 Wash. 318, 78 Pac. 999.

There is nothing in Sec. 61 (31) which prevents the use of a rubber stamp in the indorsement of checks, drafts and notes. Flanders v. Snare, 37 Pa. Super. Ct. 28.

Construing corresponding provision of the English Bills of Exchange Act: Section 32 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Trust Co. v. Nat. Bank, 101 U. S. 68; Hartwell v. Hemmenway, 7 Pick. 117; Com.

v. Spilman, 124 Mass. 327; Haskill v. Brown, 65 Ill. 29; Peach v. Bligh, 37 Ill. 317; French v. Turner, 15 Ind. 59; Elgin City Banking Co. v. Zelch, 57 Minn. 487; Foger v. Chase, 18 Dick. 63; Dunham v. Peterson, 5 N. Dak. 414; Bishop v. Chase, 156 Mo. 158; Well v. Hollenbeck, 19 Neb. 639; Evans v. Freeman, 142 N. C. 61; Mayers v. McRemmon, 140 N. C. 640; Phelps v. Church, 65 Mich. 232; Whitworth v. Pelton, 81 Mich. 98; Stevens v. Hannan, 86 Mich. 307; Markey v. Corey, 108 Mich. 184; Hall v. Toby, 110 Pa. St. 318; Thorp v. Mindeman, 123 Wis. 149; Crosby v. Roub, 16 Wis. 616. See Spencer v. Halpern, 62 Ark. 595, 36 L. R. A. 120.

May be made upon the face: Shain v. Sullivan, 106 Calif. 208, 39 Pac. 606; Haines v. Dubois, 30 N. J. L. 259; Partridge v. Davis, 20 Ver. 499. See also U. S. Nat. Bank v. Geer, 55 Neb. 462, 75 N. W. 1088, 70 Amer. St. R. 390.

§ 62 (32). Indorsement must be of entire instrument. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.[1a]

See text, § 100.

Construing corresponding provision of English Bills of Exchange Act: 32 (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Smith v. Shippey, 182 Pa. St. 24; Hughes v. Kiddell, 2 Bay (S. C.) 324; Lindsay v. Price, 33 Tex. 282; Hawkins v. Cardy, 1 Ld. Raymond 360.

§ 63 (33). Kinds of indorsement. An indorsement may be either special or in blank; and it may also be either restrictive or qualified or conditional.

See text, § 101.

Construing corresponding provision of English Bills of Exchange Act: Sec. 32 (6), 34.

§ 64 (34). Special indorsement; indorsement in blank. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.[1, 1a]

See text, § 112, 102.

Cross sections: 27 (8), 70 (40), 28 (9).

1—This section construed: Jerman v. Edwards, 29 App. D. C. 535.

Construing corresponding provision of English Bills of Exchange Act: 34 (1), (2), (3), 31 (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Habersham v. Lehman, 63 Ga. 383; Johnson v. Mitchell, 50 Tex. 212; Torbest v. Montague, 38 Colo. 325.

§ 65 (35). Blank indorsement; how changed to special indorsement. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.[1, 1a]

See text, § 112.

Cross section: 78 (48).

1—This section construed: Jerman v. Edwards, 29 App. D. C. 535.

Construing corresponding provision of English Bills of Exchange Act: Sec. 34 (4).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Beckwith v. Angell, 6 Conn. 317; Martin v. Cole, 104 U. S. 37; State Nat. Bank v. Haylen, 14 Neb. 482; Belden v. Hann, 61 Iowa 42; Lyon v. Ewings, 17 Wis. 63. See Erwin v. Lynn, 16 Ohio St. 547; Scott v. Calkin, 139 Mass. 529.

§ 66 (36). When indorsement restrictive. An indorsement is restrictive,[1a] which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

See text, § 105.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 35 (1) Williams Deacon & Co. v. Shadbolt, 1 Cababe & Ellis, 529.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Central R. R. Co. v. First Nat. Bank of Lynchburg, 73 Ga. 384; Armstrong v. National Bank of Boyertown, 90 Ky. 431; Power v. Finnis, 4 Call. (Va.) 411; Locke v. Leonard Silk Co., 37 Mich. 479; Fuller v. Bennett, 55 Mich. 357; Cecil Bank v. Farmers' Bank, 22 Md. 148; Freeman's Bank v. National Tube Works, 151 Mass. 413; Northwestern National Bank

v. Bank of Commerce, 107 Mo. 402; National Butchers' and Drovers' Bank v. Hubbell, 117 N. Y. 384; Hook v. Pratt, 78 N. Y. 371, 375; Sweeney v. Easter, 1 Wall 173; Bank of America v. Waydell, 187 N. Y. 115; Blaine v. Bourn, 11 R. I. 119; Leavitt v. Putnam, 3 N. Y. 494; Commercial National Bank v. Armstrong, 39 Fed. 684; City Bank of Sherman v. Weiss, 68 Tex. 332; Commercial National Bank v. Hamilton National Bank, 42 Fed. Rep. 880; Bank of Metropolis v. First National Bank of Jersey City, 19 Fed. Rep. 158; Commercial Nat. Bank v. Armstrong, 148 U. S. 50; Floyd v. Sigourney, 5 Bing. 252, 3 M. & P. 229; Ines & Prescott, 1 Atk. 245.

§ 67 (37). Effect of restrictive indorsement; rights of indorsee. A restrictive indorsement confers upon the indorsee the right:[1, 1a]

1. To receive payment of the instrument; or
2. To bring any action thereon that the indorser could bring; or
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

See text, § 105.

Cross section: 78 (48).

1—This section construed: Jerman v. Edwards, 29 App. D. C. 535; Smith v. Boyer, 46 Ore. 143, 79 Pac. 497.

Construing corresponding provision of English Bills of Exchange Act: 35 (2), (3).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Wilson v. Folson, 79 Ga. 137; Regina Flour Mill Co. v. Holmes, 156 Mass. 11; Spofford v. Morton, 126 Mass. 333; Whiten v. Hayden, 9 Allen 408; Cummings v. Kohn, 12 Mich. 585. See Rock County National Bank v. Hollister, 21 Minn. 385; Roberts v. Parrish, 17 Oregon 583; Ward v. Tyler, 52 Pa. St. 393; Wintermute v. Torrent, 83 Mich. 555; Watkins v. Plummer, 93 Mich. 215; Benjamin v. Early, 123 Mich. 93; Cody v. City Nat. Bank, 55 Mich. 379; McDaniel v. Pressler, 3 Wash. 636.

§ 68 (38). Qualified indorsement. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.[1, 1a]

See text, § 106.

Cross section: 115 (65).

The Michigan act states: "Such an instrument," instead of "such an indorsement," a clerical error.

1—This section construed: Evans v. Freeman, 142 N. C. 61, 54 S. E. 847; Thorp v. Mindeman, 123 Wis. 149, 101 N. W. 417.

Under acts 1899, p. 148, C. 94, § 38, an indorsement of a note without recourse is not sufficient to put a purchaser on his guard. Elgin City Banking Co. v. Hall (Tenn.), 108 S. W. 1068.

The indorsement of commercial paper "without recourse" does not avoid the warranty of title under the express provision of Code Supp., 1902, § 3060—a65. State v. Corning State Sav. Bank (Iowa), 115 N. W. 937.

Construing corresponding provision of English Bills of Exchange Act: Sec. 16 (1), 33.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Cowles v. Harts, 3 Conn. 522; Stewart v. Preston, 1 Fla. 10, 22; Borden v. Clark, 26 Mich. 410; Fitchburg Bank v. Greenwood, 2 Allen 434; Markey v. Corey, 108 Mich, 134; Corbett v. Fetzer, 47 Neb. 269; Fassin v. Hubbard, 55 N. Y. 470; Doolittle v. Ferry, 20 Kan. 230, 27 Am. Rep. 166; Stevenson v. O'Neal, 71 Ill. 314; Kelley v. Whitney, 45 Wis. 110; Grant v. Fleming, 46 Pa. St. 140; Epler v. Funk, 8 Pa. St. 468; Bisbing v. Graham, 14 Pa. St. 14; statute applied Elgin City Baling Co. v. Hall (Tenn.), 108 S. W. Rep. 1068; Lenox v. Picot, 2 Rand, 260; Lyons v. Ewings, 17 Wis. 61.

§ 69 (39). Conditional indorsement. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.[1a]

See text, § 104.

Construing corresponding provision of the English Bills of Exchange Act: 33.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Tappan v. Ely, 15 Wend. 362; Madison Square Bank v. Purle, 137 N. Y. 444; Robertson v. Kensington, 4 Taunt. 30.

§ 70 (40). Indorsement of instrument payable to bearer. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.[1a]

See text, § 112.

Cross sections: See 116 (66), 117 (67).
The Illinois Act changes this section.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Mitchell

v. Fuller, 15 Pa. St. 268; Watervliet Bank v. Hoyt, 1 Den. 608; Farmers' and Merchants' Bank v. Bank of Rutherford, 115 Tenn. 64; Johnson v. Mitchell, 50 Tex. 212; Smith v. Clarke, Peake, 225; Bates v. Butler, 46 Me. 387.

§ 71 (41). Indorsement where payable to two or more persons. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.[1, 1a]

See text, § 98.

Cross sections: 66 (36).

Missouri states "where such an instrument."

The Wisconsin Act (Sec. 1676-11) inserts before "indorsees," "joint."

1—This section construed: Kaufman v. State Sav. Bank (Mich.), 114 N. W. 863; First Nat. Bank v. Gridly, 112 App. Div. 398, 98 N. Y. S. 445.

Construing corresponding provision of English Bills of Exchange Act: 32 (3).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Allen v. Corn Exchange Bank, 87 App. Div. (N. Y.) 335; Ryhiner v. Feickert, 92 Ill. 305; Wood v. Wood, 16 N. J. L. 428.

§ 72 (42). Effect of instrument drawn or indorsed to a person as cashier. Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed *prima facie* to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.[1, 1a]

See text, § 98.

Cross section: 37 (18).

1—This section construed: Johnson v. Buffalo Bank (Iowa), 112 N. W. 165; Griffin v. Erskine, 131 Iowa 444, 109 N. W. 13; First Nat. Bank v. McCullough (Oregon), 93 Pac. 366.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Watervliet Bank v. White, Denio 608; Farmers', etc., Bank v. Troy City Bank, 1 Doug. (Mich.) 457; First Nat. Bank v. Johnson, 133 Mich. 700; Bank of the State v. Muskingum Bank, 29 N. Y. 619; First Nat. Bank v. Hall, 44 N. Y. 395; Bank of Genesee v. Patchir Bank, 19 N. Y. 312; Folyer v. Chase, 18 Pick. 63; Lookout Bank v. Aull, 93 Tenn. 645.

§ 73 (43). Indorsement where name is misspelled, et cetera. Where the name of a payee or indorsee is wrongly designated

or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.[1a]

See text, § 110.

Construing corresponding provision of English Bills of Exchange Act: 32 (4).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Salmon v. Hopkins, 61 Conn. 47; Bryant v. Eastman, 7 Cush. 111; Bolles v. Stearns, 11 Cush. 320.

§ 74 (44). Indorsement in representative capacity. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.[1a]

See text, § 110.

Cross sections: 39 (20), 68 (38).

Construing corresponding provision of English Bills of Exchange Act: 31 (5).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Towne v. Rice, 122 Mass. 67; Schmittler v. Simon, 101 N. Y. 554; Grafton Nat. Bank v. Wing, 172 Mass. 513.

§ 75 (45). Time of indorsement; presumption. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed *prima facie* to have been effected before the instrument was overdue.[1, 1a]

See text, § 110.

Cross section: 91 (52).

1—This section construed: Colborn v. Arbecam, 54 Misc. R. 623, 104 N. Y. S. 986; German American Bank v. Cunningham, 97 App. Div. 244, 89 N. Y. S. 836.

Construing corresponding provision of English Bills of Exchange Act: 36 (4).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: White v. Camp, 1 Fla. 94; City Bank v. Dill, 84 Mich. 549; Mason v. Noonan, 7 Wis. 609; Brown v. Hall, 33 Gratt. 23, 30; Ranger v. Carey, 1 Met. (Mass.) 369; Smith v. Mevlin, 89 Ill. 193. See Ruddell v. Landers, 25 Ark. 238; Clendennin v. Southerland, 31 Ark. 20.

§ 76 (46). Place of indorsement; presumption. Except where the contrary appears every indorsement is presumed *prima facie* to have been made at the place where the instrument is dated.[1, 1a]

See text, § 110.

1—This section construed: Chemical Nat. Bank v. Kellogg, 183 N. Y. 92, 75 N. E. 1103.

An instrument is presumed to have been made where it is dated. Manufacturers' Commercial Co. v. Blitz, 115 N. Y. S. 402.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Glidden v. Chamberlin, 167 Mass. 486; Brown v. Hall, 33 Gratt. 27, 29; Maxwell v. Vansant, 46 Ill. 58; Fleese v. Brownell, 35 N. J. L. 285; Ingalls v. Lee, 9 Barb. 647; Snow v. Perkins, 2 Mich. 238; Smith v. Caro, 9 Oregon, 278; Bank of British N. Am. v. Ellis, 6 Sawyer 98; Chapman v. Cottrell, 34 N. J. Ex. 186.

§ 77 (47). Continuation of negotiable character. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.[1a]

See text, §§ 13, 110.

Cross sections: 66 (36), 67 (37), 200 (119), Et Seq.

Construing corresponding provision of English Bills of Exchange Act: 36 (1), (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: French v. Jarvis, 29 Conn. 347; Brown v. Hill, 33 Gratt. 23, 28; McSherry v. Brooks, 46 Md. 103, 118; Powers v. Nelson, 19 Mo. 190; Cumberland Bank v. Hann, 3 Harr. (N. J.) 222; Berry v. Robinson, 9 Johns. 121; Van Hoosen v. Van Alstyne, 3 Wend. 79; Poole v. Tolleson, 1 McCord 200; Adairs v. Lenox, 15 Oregon 489; Seyfert v. Edison, 45 N. J. L. 393; Patterson v. Todd, 18 Pa. St. 426; Rosson v. Carroll, 90 Tenn. 90; Bank of Washington v. Texas, 20 Wall. 72; Callow v. Lawrence, 3 M. & S. 95; Charles v. Warsden, 1 Taunt. 224.

§ 78 (48). Striking out indorsement. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.[1, 1a]

See text, § 110.

1—This section construed: New Haven Mfg. Co. v. New Haven Pulp Co., 76 Conn. 126, 55 Atl. 604; Jerman v. Edwards, 29 App. D. C. 535.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Preston v. Mann, 25 Conn. 127; Merz v. Kaiser, 20 La. Ann. 379; Myer v. Jadis, 1 M. & Rob. 247; Atkins v. Meidner, 79 Mich. 575; Middleton v. Griffith, 57 N. J. L. 442, 31 A. 405; Lock v. Leonard Silk Co., 37 Mich. 479; Rend v. Dovey, 83 Pa. St. 281; Best v. Nakomis Nat. Bank, 76 Ill. 608;

Bank of America v. Senior, 11 R. I. 376; Royer v. Nye, 52 Vt. 375. See Morris v. Cude, 57 Texas 337; Bank of U. S. v. Morre, Fed. Cas. No. 930; Van Arsdale v. Hax, 107 Fed. Rep. 878.

§ 79 (49). Transfer without indorsement; effect of. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.[1, 1a]

See text, § 113.

Cross sections: 206 (125), 60 (30), 61 (31), 37 (18), 323 (187), 98 (59).

After the word "right" in the first sentence the Missouri act is as follows: "To enforce the instrument against one who signed 'for the accommodation of his tranferrer and the right to have the signature of the transferrer if omitted by accident or mistake. But for the purpose," etc.

The Colorado act (No. 49) inserts after "transferrer," "if omitted by mistake, accident or fraud."

The Wisconsin act (No. 1676-19) adds at the end of this section: "When the indorsement was omitted by mistake, or there was an agreement to indorse made at the time of the transfer, the indorsement, when made, relates back to the time of transfer."

1—This section construed: Kell v. Construction Co., 143 N. C. 429, 55 S. E. 826; Mayers v. McRimmon, 140 N. E. 640, 53 S. E. 447; Mener v. Phenix Nat. Bank, 94 App. Div. 331, 88 N. Y. S. 83; Swenson v. Stoltz, 36 Wash. 318, 78 Pac. 999; O'Conner v. Slatter (Wash.), 93 Pac. 1078; Sawless v. State, 114 Wis. 189, 89 N. W. 891.

The taker for value of a negotiable instrument without indorsement takes no better title than his assignee had thereunder. Marling v. Fitzgerald (Wis. 1909), 120 N. W. 388.

When the holder of an instrument payable to his order transfers it for value without indorsing it, the transferee obtains such title as the transferrer had; but for the purpose of determining whether transferee is a holder in due course the negotiation takes effect as of the time when the indorsement is actually made. Such indorsement never having been made the plaintiff cannot be deemed to be a holder in due course, as defined by sections 2, 60, 61, 91 and 98. Manufacturers' Commercial Co. v. Blitz, 115 N. Y. S. 402.

Construing corresponding provision of English Bills of Exchange Act: 31 (4). Walters v. Neary, 21 T. S. R. 146; Day v. Longhurst, W. N. (1893) 3.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Simpson

v. Hall, 47 Conn. 417; Robinson v. Wilkinson, 38 Mich. 299; Minor v. Bewick, 55 Mich. 491; Osgood v. Artt, 17 Fed. 575; Goshen National Bank v. Bingham, 118 N. Y. 349, 23 N. E. 180; Jenkins v. Wilkinson, 110 N. C. 532; Bend v. Dedolph, 29 Wis. 136.

§ 80 (50). When prior party may negotiate instrument. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.[1, 1a]

See text, § 110.

Cross sections: 200 (119), 202 (121).

1—This section construed: Quimby v. Varnum, 190 Mass. 211, 76 N. E. 671.

Construing corresponding provision of English Bills of Exchange Act: 37.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Oliphant v. Vannest, 58 N. J. L. 162; Stevens v. Hannan, 86 Mich. 305, 88 Mich. 13; Curtis v. Sprague, 51 Calif. 239; Atterborough v. Mackenzie, 25 L. J. Ex. 244.

ARTICLE V.

RIGHTS OF HOLDER.

§ 90 (51). Right of holder to sue; payment.
91 (52). What constitutes a holder in due course.
92 (53). When person not deemed holder in due course.
93 (54). Notice before full amount paid.
§ 94 (55). When title defective.
95 (56). What constitutes notice of defect.
96 (57). Rights of holder in due course.
97 (58). When subject to original defenses.
98 (59). Who deemed holder in due course.

Sections 90 to 98 above are the sections of the New York law. Sections 51 to 59 above (in parenthesis) are the sections used by the commissioners.

The above sections correspond to sections 51 to 59 in the following states and territories: Alabama, Connecticut, Colorado, District of Columbia, Florida, Idaho, Illinois, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming.

They are found as the following sections in the following states and territories: 3354 to 3362 in Arizona; 58 to 66 in Kansas and Oregon; 70 to 78 in Maryland; 53 to 61 in Michigan; 3172w, 3172y, 3172z, 3173, 3173a, 3173b, 3173c, 3173d; 59 to 67 in Rhode Island; 1676-21 to 1676-29 in Wisconsin.

§ 90 (51). Right of holder to sue; payment. The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.[1, 1a]

See text, § 182.

Cross sections: See Secs. 67 (37) subd. 2, 148 (88), 200 (119).

1—This section construed: New Haven Mfg. Co. v. New Haven Pulp Co., 76 Conn. 126, 55 Atl. 604; Cleary v. DeBeck, 104 N. Y. S. 831; Schlesinger v. Kurziok, 94 N. Y. S. 442; Boline v. Wilson (Kans.), 89 Pac. 678; Stanly v. Penny (Kans.), 88 Pac. 875; Tullis v. McCleary, 128 Iowa 493; Williams v. Halt, 170 Mass. 351; Tyson v. Jayner, 139 N. C. 69; Marling v. Mommensaw, 127 Wis. 363; Poess v. Twelfth Ward Bank, 86 N. Y. S. 857; Fishbun v. Londershauser (Oregon), 92 Pac. 1060. The payee or indorsee of a promissory note, who is in possession of it, though not the beneficial owner thereof, may sue thereon in his own name by consent of the owner, and for such purpose may strike out his own and subsequent indorsements. R. M. Owen & Co. v. Storms &

Co. (N. J. 1909), 72 Atl. 441. Lowell v. Bickford et al. (Mass. 1909), 88 N. E. 1; Chateau Trust etc. Co. v. Smith et al. (Ky. 1909), 118 S. W. 279.

Construing corresponding provision of English Bills of Exchange Act: 38 (1), 38 (3).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Yenny v. Central City Bank, 44 Neb. 402; Smith v. Boyer, 46 Oregon 143; Newcombe v. Fox, 1 App. Div. 389; Webber v. Ortan, 91 Mo. 680; Ellicott v. Martin, 6 Md. 509; Kunkle v. Spooner, 9 Md. 462; Shepard v. Hauson, 9 N. D. 249.

§ 91 (52). What constitutes a holder in due course. A holder in due course is a holder who has taken the instrument under the following conditions:[1]

1. That it is complete and regular upon its face;[2, 1a] or
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;[3] or
3. That he took it in good faith and for value;[4, 2a] or
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.[3a]

See text, § 126.

Cross sections: 32 (13), 33 (14), 51 (25), 95 (56).

The Wisconsin act (Secs. 1676-22) adds a fifth subdivision: "That he took it in the usual course of business."

1—This section construed: Friggle v. Herman (Wis.), 111 N. W. 479; Karsh v. Pattler Co., 82 App. Div. 230, 81 N. Y. S. 782; Borough of Montvale v. People's Bank (N. J.), 67 Atl. 67; Arons v. Ziegford, 102 N. Y. S. 898; Voss v. Chamberlain,— Iowa —, 117 N. W. 269; Greeser v. Seigerman, 76 N. Y. S. 922; Ketcham v. Govin, 71 N. Y. S. 991; Rome v. Bowman, 183 Mass. 488, 67 N. E. 636; Mass. Natl. Bank v. Snow, 187 Mass. 159, 72 N. E. 959; Millins v. Kaufman, 104 App. Div. 442, 93 N. Y. S. 669; German-American Bank v. Cunningham, 97 App. Div. 244, 89 N. Y. S. 836; Golting v. Day, 87 N. Y. S. 510; Benedict v. Kress, 97 App. Div. 65, 89 N. Y. S. 607; Kegan v. Rock, 128 Iowa 39, 102 N. W. 805; Farmers' Bank v. Bank of Rutherford, 115 Tenn. 64, 88 S. W. 939; Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 522; Vander Ploeg v. Van Zink (Iowa), 112 N. W. 807; McNamara v. Jose, 28 Wash. 461, 86 Pac. 903; White v. Dodge, 187 Mass. 449, 73 N. E. 549; In re Troy & Cohoes Shirt Co., 136 Fed. Rep. 420; Nat. Bank v. Foley, 103 N. Y. S. 553; Silgmeister v. Lispeward Co., 107 N. Y. S. 158; Johnston Co. Savings Bank v. Walker, 79 Conn. 348, 65 Atl. 132; Boston Steel & Iron Co. v. Steuer, 183 Mass. 140, 66 N. E. 646; Groh's Sons v. Schneider, 68 N. Y. S. 862; Thrope v. White, 188 Mass. 333, 74 N. E. 592; Hathaway v. Co. of Dela, 185 N. Y. 368; Trustees of American Bank v. McComb, 105 Va. 473, 54 S. E. 14; Mehlinger v. Harriman, 185 Mass. 245, 70 N. E. 51; American Nat. Bank v. Fountain, 62 S. E. 738, N. C. 1908.

Holders of a note originally obtained by duress can recover only when bona fide holders. Siegel v. Oehl, 110 N. Y. S. 916.

When a purchaser of a note has knowledge of defenses before he pays for it, he is not a bona fide purchaser though the note may have been delivered before such knowledge. Walters v. Rock, 115 N. W. 511, N. D. 1908.

As to who is a holder in due course see Elgin City Banking Co. v. Hall (Tenn. 1907), 108 S. W. 1068.

As to who is holder in due course, see Rockefeller v. Ringle (Kan. 1908), 94 P. 810.

A discounting bank having notice of the alteration cannot claim to be holder in due course. First Nat. Bank of Wilkes-Barre v. Barmum, 160 Fed. 245.

Defendant gave a check to a person by mistake. The check was delivered to plaintiff as a loan without consideration. Held, that plaintiff was not a holder of the check in due course under Negotiable Instruments Law, Laws 1897, p. 732, c. 612, § 91, subd. 3; Rosental v. Paront, 110 N. Y. S. 223.

Under the Negotiable Instruments Law, Laws 1897, p. 719, c. 612, a bank was not a bona fide holder of notes sent to it or the payee, and indorsed to it by the payee to meet overdrafts or to cover advances, when the bank's cashier received them, they were blank as to amount, date and maturity; notice to the cashier being notice to the bank. Hunter v. Bacon, 111 N. Y. S. 820.

As to who is a bona fide holder, Ward v. City Trust Co. of N. Y., 117 App. Div. 130; 102 N. Y. S. 550; reversed 84 N. E. 585.

On this same point see Royal Bank of N. Y. v. German-American Ins. Co., 109 N. Y. S. 822.

An indorsee of a check for value and in good faith, before it was overdue and without notice of any infirmity, or that payment had been stopped, was "a holder in due course," with all the rights appertaining thereto under Rev. Laws, c. 73 § 69. Buzzell v. Tobin (Mass. 1909), 86 N. E. 923; Fergenspan v. McDonald (Mass. March, 1909), 87 N. E. 624; Weiss v. Riser, 114 N. Y. S. 984; Nat. Bank of Commerce v. Pick, 13 N. Dakota 74, 99 N. W. 63; McMann v. Walker, 31 Colo. 261, 72 Pac. 1055; Mersica v. Alderman, 77 Conn. 634, 60 Atl. 109; Chateau Trust etc. Co. v. Smith et al. (Ky. 1909), 118 S. W. 279.

2—Elias v. Whitney, 98 N. Y. S. 667; Trustees of American Bank v. McComb, 105 Va. 473, 54 S. E. 14; Losee v. Bissell, 76 Pa. St. 459.

3—Lindsay v. Dutton, 217 Pa. 148, 66 Atl. 250; McGhee v. Croake, 105 N. Y. S. 60; Hodge v. Wallace, 129 Wis. 84, 108 N. W. 212; Wilkins v. Usher (Ky.), 97 S. W. 37; Boston Steel & Iron Co. v. Stever, 183 Mass. 140; Vander Plag v. Van Zink (Iowa), 112 N. W. Rep. 807.

4—Milins v. Kauffman, 104 App. Div. 442, 93 N. Y. S. 669; Fayette Nat. Bank v. Summers (Va.), 54 S. E. 862; Natl. Bank v. Foley, 103 N. Y. S. 553; Citizens' State Bank v. Cowles, 180 N. Y. 346, 73 N. E. 33; Hodge v. Smith, 130 Wis. 326, 110 N. W. 192; Albany Bank v. People's Ice Co., 92 App. Div. 47, 86 N. Y. S. 773; McKnight v. Parsons (Iowa), 113 N. W. 858; Montrose Sav. Bank v. Clausen (Iowa), 114 N. W. 547; Consolidation Bank v. Kirkland, 99 App. Div. 121, 9 N. Y. S. 353; Albany Co. Bank v. People's Ice Co., 92 App. Div. (N. Y.) 47; City Deposit Bank v. Green, 130 Iowa 384; Elgin City Banking Co. v. Hall (Tenn.), 108 S. W. Rep. 1068; Commercial Nat'l Bank v. Citizens' State Bank, 132 Iowa 706; Bank of America v. Waydell, 187 N. Y. 115; Northfield

Nat. Bank v. Arndt (Wis.), 112 N. W. Rep. 451; Wallabout Bank v. Peyton, 123 App. Div. (N. Y.) 727; Mehlinger v. Harriman, 185 Mass. 245.

Construing corresponding provision of English Bills of Exchange Act: 29 (1), (a) (b); London & County Banking Co. v. London & River Plate Bank, 21 Q. B. D. 535; Lewis v. Clay, 14 L. T. Rep. 149; Herdman v. Wheeler (1902), 1 K. B. 361; Lloyd's Bank v. Cooke (1907), 1 K. B. 794; Hitchcock v. Edwards, 60 L. T. Rep. 636; Hornby v. McLaren, 24 L. T. R. 494.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Under Section 1 of § 91 (52): Brewster v. McCardel, 8 Wend. 478; Davis Sewing Machine Co. v. Best, 105 N. Y. 59.

Under Section 2: Davis v. Lichtenberger, 41 Neb. 751, 60 N. W. 79; Watson v. Russell, 3 B. & S. 34, 5 B. & S. 968; Nelson v. Cowing, 6 Hill 333; Armstrong v. American Nat'l Bank, 133 U. S. 433; McKin v. Kling, 58 Md. 502; Marsh v. Marshall, 53 Pa. St. 396; Davis v. Miller, 14 Gratt. 1; Cattrell v. Watkins, 89 Va. 801; Patterson v. Wright, 64 Wis. 289; Kelly v. Whitney, 45 Wis. 110; Hart v. Stickney, 41 Wis. 630; Nelvill v. Gregg, 51 Barb. 253; Venton v. King, 4 Allen 562; Continental Nat. Bank v. Townsend, 87 N. Y. 8; Sargent v. Southgate, 5 Pick. 312; Ayer v. Hutchins, 4 Mass. 370; Pine v. Smith, 11 Gray 38.

2a—Under Section 3, 91 (52): Steekel v. Steekel, 28 Pa. St. 233; Vinton v. Peck, 14 Mich. 287; Henriques v. Savings Bank, 84 Mich. 168.

3a—Under Section 4, 91 (52): Stevens v. McLochlan, 120 Mich. 285; Glines v. Savings Bank, 132 Mich. 638; Johnston Harvester Co. v. Miller, 72 Mich. 265.

§ 92 (53). When person not deemed holder in due course. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.[1, 1a]

See text, § 129.

Cross sections: 26 (7).

1—This section construed: McLean v. Byer, 24 R. I. 599, 54 Atl. 373; American Bank v. McComb, 105 Va. 473, 54 S. E. 14; Matlock v. Scheuerman (Oregon), 93 Pac. 823; Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 523; Gordon v. Levine (Mass.), 83 N. E. 861; Singer Mfg. Co. v. Summers, 143 N. C. 102.

Construing corresponding provision of English Bills of Exchange Act: See 36 (3) bill, 86 (3).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: McKin v. King, 58 Md. 502; Field v. Nickerson, 13 Mass. 131, 137; Thurston v. McKinn, 6 Mass. 428; Ranger v. Cary, 1 Metc. 369; American Bank v. Jennes, 2 Metc. 288; Ayres v. Hutchins, 4 Mass. 370; Carll v. Brown, 2 Mich. 401; Nevins v. Townsend, 6 Conn. 7; Stevens v. Brice, 21 Pick 193; Losee v. Durkin, 7 Johns. 70; Sice v. Cunningham, 1 Caeven 397-404; Mitchell v. Catchings, 23 Fed. 710; Pinder v. Barlow, 31 Vt. 529; Hemmenway v. Stone, 7 Mass. 58; Herrick v. Woolverton, 41 N. Y. 581; Paine v. Central Vermont R. R. Co., 14 Fed. 269.

§ 93 (54). Notice before full amount paid. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.[1, 1a]

See text, § 129.

1—This section construed: Hodge v. Smith, 130 Wis. 326, 110 N. W. 192; Goetting v. Day, 87 N. Y. S. 510; Albany Co. Bank v. People's In. Co., 42 App. Div. 47, 86 N. Y. S. 773, 1128.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Drovers' National Bank v. Blue, 110 Mich. 31; Dresser v. Mo., etc. R. R. Const. Co., 93 U. S. 93; Fredonia National Bank v. Tommer's, 131 Mich. 674.

§ 94 (55). When title defective. The title of a person who negotiates an instrument is defective within the meaning of this act when he obtains the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.[1, 1a]

See text, §§ 127, 142.

Kansas states "alleged" instead of "illegal," a clerical error.

The Wisconsin Act (Secs. 1676-25) adds to this section the following: "And the title of such person is absolutely void when such instrument or signature was so procured from a person who did not know the nature of the instrument and could not have obtained such knowledge by the use of ordinary care."

1—This section construed: Keegan v. Rock, 128 Iowa 39, 102 N. W. 805; Yakima Bank v. McAllister, 37 Wash. 566, 79 Pac. 1119; Hynes v. Plastino (Wash.), 87 Pac. 1127; Groh's Sons v. Schneider, 68 N. Y. S. 862; Johnson Co. Sav. Bank v. Walker, 79 Conn. 348, 65 Atl. 132; McKnight v. Parsons (Iowa), 113 N. W. 858; Wood v. Babbitt, 149 Fed. 818; Mitchell v. Baldwin, 88 App. Div. 265, 84 N. Y. S. 1043; German-American Bank v. Cunningham, 97 App. Div. 244, 89 N. Y. S. 836; Keen v. Behan, 40 Wash. 505, 82 Pac. 884; Drinkall v. Movins State Bank, 11 N. Dak. 10, 88 N. W. 724; Wirt v. Stubblefield, 17 App. D. C. 283; Schlesinger v. Kelley, 114 App. Div. 546, 99 N. Y. S. 1083; Broadway Trust Co. v. Monheim, 95 N. Y. S. 93; Schlesinger v. Lehmaier, 191 N. Y. 69, 73, 83 N. E. 657, 658; Alexander v. Hazelrigg (Ky.), 97 S. W. 353; Lawson v. First National Bank (Ky.), 102 S. W. 324; McAbee v. Mercer Nat. Bank (Ky.), 104 S. W. 287; Quiggle v. Herman, 111 N. W. 479; Hodge v. Smith, 130 Wis. 326, 110 N. W. 192; Awkland v. Arnold, 131 Wis. 64, 111 N. W. 212; Keene v. Behan, 40 Wash. 505; National Revere Bank v. Morse, 163 Mass. 381. In an action on a check drawn by the defendant and indorsed by a third person, where it appeared that the indorser obtained title by fraud, his title was defective. Cole

Banking Co. v. Sinclair, — Utah —, 98 Pac. 411; Packard v. Figlinolo, 114 N. Y. S. 753.

Construing corresponding provision of English Bills of Exchange Act: 29 (2); Alcock v. Smith (1892), 1 Ch. 238.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Magoon v. Reher, 76 Wis. 392; Kinney v. Kruse, 28 Wis. 189; Gray's Admr. v. Bank of Kentucky, 29 Pa. St. 365; Brown v. Reed, 79 Pa. St. 370; Papke v. G. H. Hammond Co., 192 Ill. 631, 61 N. E. 910; Porter v. Hardy, 10 N. D. 551, 88 N. W. 458; Beard v. Hill, 131 Mich. 246; Bank v. Johnson, 133 Mich. 700; Walker v. Ebert, 29 Wis. 194; Baldwin v. Bricker, 86 Ind. 222; Slacom v. Wishard, 3 McLean 517, Fed. Cas. No. 12933.

§ 95 (56). What constitutes notice of defect. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.[1, 1a]

See text, § 129.

1—This section construed: Ward v. City Trust Co., 102 N. Y. S. 50; Groh's Sons v. Schneider, 68 N. Y. S. 862; Packard v. Windhalz, 88 App. Div. 365, 84 N. Y. S. 666; Seigmeister v. Lispenard Co., 107 N. Y. S. 158; In re Happer-Morgan Co., 156 Fed. 525; Quiggle v. Herman (Wis.), 111 N. W. 479; Yakima v. McAllister, 37 Wash. 566, 79 Pac. 1119; Johnson Co. Sav. Bank v. Walker, 79 Conn. 348, 65 Atl. 132; Johnson Co. Sav. Bank v. Rapp (Wash.), 91 Pac. 382; Valley Savings Bank v. Mercer, 97 Md. 458, 55 Atl. 435; Hutchins v. Langley, 27 App. D. C. 234; Ketchan v. Gavin, 71 N. Y. S. 991; Matlock v. Scheuerman (Oregon), 93 Pac. 823; Aldrich v. Peckham (N. J.), 68 Atl. 345; Borough of Montvale v. People's Bank (N. J.), 67 Atl. 67; McKnight v. Parsons (Iowa), 113 N. W. 858; Valley Savings Bank v. Mercer, 97 Md. 458, 555 Atl. 435; Cheener v. P. S. L. E. R. R. Co., 150 N. Y. 59; American Exchange National Bank v. New York Belting Co., 148 N. Y. 705; Knox v. Eden Musee Am. Co., 148 N. Y. 454; Conayoharie Nat. Bank v. Diependorf, 123 N. Y. 202; Vosburgh v. Diefendorf, 119 N. Y. 357; Jarvis v. Manhattan Beach Co., 148 N. Y. 652; Murray v. Lardner, 2 Wall. 110; Swift v. Smith, 102 U. S. 442; Belmont v. Hogue, 35 N. Y. 65; Welsh v. Sage, 47 N. Y. 143; Nat. Bank of Republic v. Young, 41 N. J. Eq. 531; Fifth Ward Sav. Bank v. First Nat. Bank, 48 N. J. Law 513; Credit Co. v. Howe Machine Co., 54 Conn. 357; Ladd v. Franklin, 37 Conn. 64; Craft's Appeal, 42 Conn. 54; In re Troy v. Cohoes Shirt Co., 136 Fed. Rep. 420; Pelton v. Spider Lake Co. (Wis.), 112 N. W. 29; Ore v. South Amboy Co., 94 N. Y. S. 524; Mass. Nat. Bank v. Snow, 187 Mass. 159, 72 N. E. 959; Goetting v. Day, 87 N. Y. S. 510; Ford v. Brown, 114 Tenn. 467, 881 S. W. 1036; Unaka Nat. Bank v. Butler, 113 Tenn. 574; Black v. Bank of Westminster, 96 Md. 399, 54 Atl. 88; McKnight v. Parsons (Iowa), 113 N. W. 858; McNamara v. Jose, 28 Wash. 461; Lassas v. McCarty, 47 Oregon 474, 84 Pac. 76; Morton v. N. A. & Selma Rt. Co.,

79 Ala. 590; Seltzer v. Droe, 135 N. C. 428; Orr v. South Amboy Terra Cotta Co., 113 App. Div. (N. Y.) 103; Seward Nat'l Bank v. Morgan, 165 Pa. St. 199; Bank of Monongahela Valley v. Weston, 172 N. Y. 259; Citizens' State Bank v. Cowles, 89 App. Div. (N. Y.) 281; Chemical Nat. Bank v. Kellogg, 183 N. Y. 92, 96; Spencer v. Alki Point Transportation Co. (Wash. 1909), 101 Pac. 509.

Construing corresponding provision of English Bills of Exchange Act: See 90.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Philan v. Massachusetts, 67 Pa. St. 59; Moorehead v. Gilmore, 77 Pa. St. 118; Frank v. Lilienfeld, 33 Gratt. 377; Connington v. Scott, 90 Hun 410-11; Fischler v. Schurman, 49 Misc. (N. Y.) 257; Lockwood v. Noble, 113 Mich. 418; Conrad v. Manning's Est., 125 Mich. 77; Williams v. Huntington, 68 Md. 590; Am. Ex. Nat. Bank v. N. Y. Belting, etc. Co., 148 N. Y. 698; Sloan v. The Union Banking Co., 67 Pa. St. 470; Wilson v. Metropolitan R. R. Co., 120 N. Y. 145, 150; Nat'l Park Bank v. German-American Warehousing & Security Co., 116 N. Y. 281.

§ 96 (57). Rights of holder in due course. A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.[1, 1a]

See text, § 126.

The Wisconsin Act (Secs. 1676-27) adds the following: "Except as provided in Sections 1944 and 1945 of these statutes, relating to insurance premiums, and also in cases where the title of the person negotiating such instrument is void under the provision of Sections 1676-25 of this act."

The Illinois Act makes fraud touching the execution and gambling consideration "real defenses" and good against a holder in due course.

1—This section construed: Unaka Nat. Bank v. Butler, 113 Tenn. 574, 83 S. W. 655; Friggle v. Herman (Wis.), 111 N. W. 479; Vander Ploeg v. Van Zunk (Iowa), 112 N. W. 807; In re Troy v. Cohoes Shirt Co., 136 Fed. Rep. 420; Nat'l Bank of Commerce v. Pick, 13 N. Dak. 74, 99 N. W. 63; Lossas v. McCarty, 47 Oregon 474, 84 Pac. 76; McNamara v. Jose, 28 Wash. 461, 68 Pac. 903; Albany Co. Bank v. People Ice Co., 92 App. Div. 47, 86 N. Y. S. 773; Packard v. Windholz, 88 App. Div. 365, 84 N. Y. S. 666; Rosenthal v. Freedman, 103 N. Y. S. 714; Greeser v. Sugerman, 76 N. Y. S. 922; Benedict v. Kress, 97 App. Div. 65, 89 N. Y. S. 607; Broadway Trust Co. v. Manheim, 95 N. Y. S. 93; Gansevort Bank v. Gilday, 104 N. Y. S. 271; Ketcham v. Gavin, 71 N. Y. S. 991; German-American Bank v. Cunningham, 97 App. Div. 244, 89 N. Y. S. 836; Mersick v. Alderman, 77 Conn. 634, 60 Atl. 109; Schlesinger v. Gilhooly, 189 N. Y. 1, 81 N. E. 619; Arnd v. Sjohlaim, 131 Wis. 642, 111 N. W. 666; Mass. Nat. Bank v. Snow, 187 Mass. 160; Schlesinger v. Lehmaier, 191 N. Y. 69; Schlesinger v. Kelly, 114 App. Div. (N. Y.); Alexander v. Hazelrigg, 97 S. W. Rep. 353; Lawson v. First Nat'l Bank, 102 S. W. Rep. 324; Sullivan v. German Nat. Bank, 18 Colo. App. 99; Cole Banking Co. v. Sinclair, — Utah —, 98 Pac. 411; Gordon v. Levine, 194 Mass. 418; Lassas v. McCarty, 42 Orr. 474; Chemical Nat. Bank v. Kellogg, 183 N. Y. 92; Chateau Trust etc. Co. v. Smith et al. (Ky. 1909),

118 S. W. 279; Johnson Co. Savings Bank v. Walker, (Conn. 1909), 72 Atl. 579.

Construing corresponding provision of English Bills of Exchange Act: 38 (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Wirt v. Stubblefield, 17 App. Cas. D. C. 283; Cromwell v. County of Sac, 96 U. S. 60; Burell v. Dickinson, 64 Conn. 61; Rowland v. Fowler, 47 Conn. 349; Chapman v. Remington, 80 Mich. 552; Little v. Mills, 98 Mich. 423; First Nat. Bank v. Housknecht, 121 Mich. 313; Welhams v. Huntington, 68 Md. 590; Moore v. Baird, 30 Pa. 136; Harger v. Wilson, 63 Barb. 237; Huff v. Wagner, 63 Barb. 230; Todd v. Shelbourne, 81 Hun 512; Holcomb v. Wyckoff, 35 N. J. L. 38; Braenhall v. Atlantic Nat'l Bank, 36 N. J. Law 243; Oppenheimer v. Farmers' & Mechanics' Bank, 97 Tenn. 19.

§ 97 (58). When subject to original defenses. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.[1, 1a]

See text, § 126.

The Wisconsin Act (Sec. 1676-28) inserts after "fraud" "duress," and substitutes for "the latter" "such holder."

1—This section construed: Black v. Bank of Westminster, 96 Md. 399, 54 Atl. 88; Mersick v. Alderman, 77 Conn. 634, 60 Atl. 109; Groh's Sons v. Schneider, 68 N. Y. S. 862; Jennings v. Carlucci, 87 N. Y. S. 475; Bryan v. Harr, 21 App. D. C. 190; Symonds v. Riley, 188 Mass. 470, 74 N. E. 926; Packard v. Windholz, 88 App. Div. 365, 84 N. Y. S. 666; American Seeding Co. v. Slocum, 108 N. Y. S. 1042; Andrews v. Rabertson, 11 Wis. 334, 87 N. W. 190; Weiss v. Rieser, 114 N. Y. S. 984.

A holder who does not acquire it in due course is subject to the same perils as regards defenses by the payor as the payee was. Marling v. Fitzgerald, Wis. 1909, 120 N. W. 388.

This provision applies to an accommodation note transferred after maturity. Marling v. Jones, Wis. 1909, 119 N. W. 931.

Construing corresponding provision of English Bills of Exchange Act: 29 (3).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Wood v. Starling, 148 Mich. 592; Shaw v. Clark, 49 Mich. 384; Burroughs v. Moss, 10 Barn. & Cress. 558; Stein v. Yglesias, 1 Crom, Meas. & Ros. 565; Whitehead v. Walker, 10 Meas. & Welsh 696; Hughes v. Large, 2 Pa. St. 103; Long v. Rhawn, 75 Pa. St. 128; Young v. Shriner, 80 Pa. St. 463; Davis v. Miller, 14 Gratt. 1; Kilcrease v. White, 6 Fla. 45; Cumberland Bank v. Haun, 3 Harrison 223; Chandler v. Drew, 6 N. H. 469; Robertson v. Breedlane, 7 Porter 541; Tuscumbria, etc. R. R. Co.

et al. v. Rhodes, 8 Ala. 206, 224; Robinson v. Lyman, 10 Conn. 31; Adair v. Lenox, 15 Oregon 489; First Bank of Champlain v. Wood, 128 N. Y. 35; Baxter v. Little, 6 Mit. 7; Cover v. Myers, 75 Md. 406; Kinney v. Kruse, 28 Wis. 183, 190-191; Boyd v. McConn, 10 Md. 118.

§ 98 (59). Who deemed holder in due course. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course.[1, 1a] But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

See text, § 126,

1—This section construed: Tamlyn v. Peterson (N. D.), 107 N. W. 1081; Keegan v. Rock, 128 Iowa 39, 102 N. W. 805; Wilkins v. Usher (Ky.), 97 S. W. 37; Mayers v. McRinnan, 140 N. C. 640, 53 S. E. 447; Calboun v. Ashecan, 104 N. Y. S. 986; Engle v. Hyman, 104 N. Y. S. 390; Karsh v. Pattier Co., 86 App. Div. 230, 81 N. Y. S. 782; Bryan v. Harr, 21 App. D. C. 190; German-American Bank v. Cunningham, 97 App. Div. 244, 89 N. Y. S. 836; Consolidation Bank v. Kirkland, 99 App. Div. 121, 91 N. Y. S. 353; Johnson Co. Sav. Bank v. Walker, 79 Conn. 348, 65 Atl. 132; Hodge v. Smith, 130 Wis. 326, 110 N. W. 192; Kerr v. Anderson (N. Dak.), 111 N. W. 614; Vander Plaege v. Van Zink (Iowa), 112 N. W. 807; Pelton v. Spider Lake Co. (Wis.), 112 N. W. 29; McKnight v. Parsons (Iowa), 113 N. W. 858; Packard v. Windholz, 88 App. Div. 365, 84 N. Y. S. 666; Benedict v. Kress, 97 App. Div. 65, 89 N. Y. S. 607; Drinkall v. Movins State Bank, 11 N. D. 10, 88 N. W. 724; In re Troy v. Cohoes Shirt Co., 136 Fed. Rep. 420; Lucker v. Iba, 54 App. Div. 566, 66 N. Y. S. 1019; Cook v. Am. Tubing Co. (R. I.), 65 Atl. 641; Abmeyer v. First Nat'l Bank (Kans.), 92 Pac. 1109; Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 522; Nat'l Bank v. Foley, 103 N. Y. S. 553; Brown v. Foldvert, 46 Oregon 363, 80 Pac. 414; Mitchell v. Baldwin, 88 App. Div. 265, 84 N. Y. S. 1043; Singer Mfg. Co. v. Summers, 143 N. C. 102; Regesters Sons Co. v. Reed, 185 Mass. 226, 227; Schultheis v. Sellers (Pa. 1909), 72 Atl. 886; Warren v. Smith (Utah 1909), 100 Pac. 1069.

Mere possession of an unindorsed negotiable note made payable to order by a person other than the payee is not prima facie evidence of ownership. Jolly v. Huebler, 112 S. W. 1013, Mo. App. 1908; American Nat. Bank v. Fountain (N. C. 1908), 62 S. E. 738; Cole Banking Co. v. Sinclair, — Utah —, 98 Pac. 411.

Every holder of a negotiable instrument is deemed *prima facie* to be a holder in due course. Beck v. Maller, 115 N. Y. S. 596.

Under this section evidence held admissible to show that the defendant's treasurer executed a note without authority for his personal debt to shift to plaintiff the burden of proving that it was a holder in due course or of overcoming the proof that the note was not given for a debt of the corporation. Louis De Jonge & Co. v. Woodport Hotel & Land Co. (N. J. 1909), 72 Atl. 439; Keene v. Behan, 40 Wash. 505; Hawkins v. Young (Iowa), 114 N. W. Rep. 1041.

Construing corresponding provision of English Bills of Exchange

Act: See 30 (2); Oakley v. Boulton, 5 L. T. R. 60; Tatam v. Haslow, 23 Q. B. D. 345; Harris v. Aldons, 18 New Zealand L. R. 449; Hawkins v. Ward, N. M. (1890), 203.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Bank v. Potvin, 116 Mich. 474; Stevens v. McLocklan, 120 Mich. 288; Grays Admr. v. Bank of Ky., 29 Pa. St. 365; Wilson v. Lazier, 11 Gratt. 477; Rovicz v. Nichells, 9 N. D. 536; Conajoharie Nat'l Bank v. Diefendorf, 123 N. Y. 191; Jay v. Diefendorf, 130 N. Y. 6; Jordon v. Graver, 99 Cal. 194; Bank v. Sargent, 85 Me. 349; Haines v. Merrill, 56 N. J. Law 312; Sullivan v. Langley, 120 Mass. 437; Merchants Nat'l Bank v. Iron Works, 159 Mass. 158; Conant v. Johnson, 165 Mass. 450; National Revere Bank v. Morse, 163 Mass. 381, 385; Williams v. Huntington, 68 Md. 590; Griffith v. Shipley, 74 Md. 591; Ellicott v. Martin, 6 Md. 509; Hutchinson v. Boggs & Kirk, 28 Pa. St. 294; Vather v. Zoner, 6 Gratt. 246; Northampton Nat. Bank v. Kidder, 106 N. Y. 221; Kinckley v. Merchants Nat. Bank, 131 Mass. 147; First Nat'l Bank v. Moore, 148 Fed. Rep. 953; Murray v. Lardner, 2 Wall. 110; Hotchkiss v. Nat'l Bank, 21 Wall. 354; Collins v. Gilbert, 94 U. S. 753; King v. Doane, 139 U. S. 166; Kinney v. Kinney, 28 Wis. 183.

ARTICLE VI.

LIABILITY OF PARTIES.

§ 110 (60). Liability of maker.
111 (61). Liability of drawer.
112 (62). Liability of acceptor.
113 (63). When person deemed indorser.
114 (64). Liability of irregular indorser.
115 (65). Warranty; where negotiation by delivery, et cetera.
§ 116 (66). Liability of general indorsers.
117 (67). Liability of indorser where paper negotiable by delivery.
118 (68). Order in which indorsers are liable.
119 (69). Liability of agent or broker.

Sections 110 to 119 above are the sections of the New York law.

Sections 60 to 69 above in the parenthesis are the sections used by the commissioners.

The above sections correspond to Sections 110 to 119 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming. In some instances these numbers have been changed by incorporating the act in a code.

They are found as the following sections in the following states and territories. As sections 3363 to 3372 in R. S. of Arizona; as 60 to 69 in Illinois; 67 to 76 in Kansas and Oregon; as 79 to 88 in Maryland; as 62 to 71 in Michigan; as 60 to 69 in Nebraska; as 3173c to 3173n in Ohio; as 68 to 77 in Rhode Island; as 1677-9 in Wisconsin.

§ 110 (60). Liability of maker. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.[1, 1a]

See text, § 120.

1—This section construed: McMann v. Walker, 31 Colo. 261, 72 Pac. 1055; Meyers v. Worthington (Mich.), 114 N. W. 404; Halsey v. Henry Jewett Co. (N. Y.), 83 N. E. 25, *semble;* see also Nat. Bank of Commerce v. Pick, 13 N. Dak. 74, 99 N. W. 63.

Corresponding provision of English Bills of Exchange Act: See 88 (1), (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Lord v.

Ocean Bank, 20 Pa. St. 384; National Bank of Phoenixville v. Buckwalter, 214 Pa. St. 289; Gumz v. Giegling, 108 Mich. 295; Phelps v. Abbott, 114 Mich. 88.

Maker admits existence of payee, etc.: Jones v. Home Furnishing Co., 9 App. Div. (N. Y.), 103; Walker v. Kuhne, 109 Ind. 313; Costor v. Peterson, 2 Wash. 204, 26 Pacific 223; McMann v. Walker, 31 Colo., 261, 72 Pac. 1055; Dulty v. Brownfiled, 1 Pa. St. 497; Griener v. Ulerey, 20 Iowa 266; Johnson v. Conklen, 119 Ind. 101.

Parol agreement to renew a note is not admissible: Heist v. Hart, 73 Pa. St. 279; Wood's Sons Co. v. Schaeffer, 173 Mass. 443.

Addition of word "surety" does not relieve from liability of maker: Hoyt v. Mead, 13 Hun 327; Inkster v. First National Bank, 30 Mich. 143; Dart v. Sherwood, 7 Wis. 446.

§ 111 (61). Liability of drawer. The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

See text, § 121.

Other acts read "accepted or paid."
The Colorado Act (61) omits "subsequent."

Construing corresponding provision in English Bills of Exchange Act: Sec. 55 (1), 16 (1).

§ 112 (62). Liability of acceptor. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:[1, 1a]

1. The existence of the drawer, the genuineness of his signature and his capacity and authority to draw the instrument;[2a] and

2. The existence of the payee and his then capacity to indorse.[3a]

See text, § 122.

Cross sections 220 (132), 230 (142), 130 (70), 116 (187), 79 (49).

Missouri omits "then" in subdivision 2 above.

1—This section construed: Schlesing v. Kurzrok, 47 Misc. R. 634, 94 N. Y. S. 442; Messer v. Phoenix Nat'l Bank, 94 App. Div. 331, 88 N. Y. S. 83.

A drawee of a bill of exchange, to which the drawer's name has been forged, who accepts or pays the same, can neither repudiate the acceptance nor recover the money paid, he being bound to know the drawer's signature. Trust Company of America v. Hamilton Bank of N. Y. City, 112 N. Y. S. 84.

An acceptor presumed to know the drawer's handwriting and if the drawer accepts or pays a bill to which the drawer's name has been forged he can neither repudiate the acceptance nor recover the money paid. Guarantee & Trust Co. v. Haven, 111 N. Y. S. 305.

Construing corresponding provisions of the English Bills of Exchange Act: 54, 54 (2), (a), (b), (c).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Discounting bill without accepting: Swope v. Ross, 40 Pa. St. 186; Attensborough v. McKenzie, 30 Eng. L. & Eq. 562.

Existence of drawers: First Nat. Bank v. Ricker, 71 Ill. 439; Deposit Bank of Georgetown v. Fayette Nat. Bank, 90 Ky. 10; Williams v. Drexel, 14 Md. 566; First Nat. Bank of Danvers v. First Nat. Bank of Salem, 151 Mass. 280; Nat. Bank of North America v. Bangs, 106 Mass. 441; Bank of U. S. v. Bank of Georgia, 10 Wheat. 333; Continental Nat. Bank v. Tradesman's Bank, 36 App. Div. (N. Y.) 112.; Marine National Bank v. National City Bank, 59 N. Y. 67; National Park Bank v. Ninth Nat'l Bank, 46 N. Y. 77; Ellis v. Insurance Company, 4 Ohio State 268; Gunston v. Heat & Power Co., 181 Pa. St. 327; Iron City Nat. Bank v. Fort Pitt Nat. Bank, 159 Pa. St. 46, 52; People's Bank v. Franklin Bank, 88 Tenn. 299; Rouvant v. San Antonio Nat. Bank, 63 Tex. 610; Bank of St. Albans v. Farmers & Mechanics Bank, 10 Vt. 141; Cooper v. Meyer, 10 B. & C. 468, 21 E. C. L. 202.

2a—If drawer dead, acceptor is estopped. Ashpitel v. Bryan, 3 B. & S. 474, 113 E. C. L. 474.

Genuineness of signature: National Park Bank v. Ninth National Bank, 46 N. Y. 77; Garland v. Jacomb, L. R. 8 Ex. 216.

Capacity of drawer: Jones v. Darch, 4 Pric. 300; Cowton v. Wickersham, 54 Pa. St. 302; Taylor v. Croker, 4 Esp. 187; Halifax v. Lyle, 3 Welsby, H. & G. 446.

Authority of drawer: Christian v. Keen, 80 Va. 369, 377; Heuertewatte v. Morris, 101 N. Y. 63, 70; see Henderson v. Thornton, 37 Miss. 448; Snydam v. Combs, 3 Green (N. J.) 133; Whitwell v. Brigham, 19 Pick. 117; Smith v. Massad, 6 C. B. 486.

3a—Payee accepts acceptor as debtor: Roborg v. Peyton, 2 Wheat. 385.

Acceptor does not admit genuineness of body: White v. Continental National Bank, 64 N. Y. S. 317.

Capacity of payee admitted: Brickley v. Edwards, 131 Ind. 3, 30 N. E. 708; Jones v. Darch, 4 Price 300; Smith v. Warsack, 6 C. B. 486.

§ 113 (63). When person deemed indorser. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly

indicates by appropriate words his intention to be bound in some other capacity.[1, 1a]

See text, § 97.

Cross sections: Sec. 36 (17), sub. 6; 114 (64-1), 202 (121), 116 (66), 160 (89), 36 (17-6), 118 (68).

1—This section construed: Hopkins v. Merrill, 79 Conn. 626, 66 Atl. 174; Toole v. Crafts, 193 Mass. 110, 78 N. E. 775; Quimby v. Varnum, 190 Mass. 211, 76 N. E. 671; Wilson v. Hendee (N. J.), 66 Atl. 413; Rockford v. First Nat. Bank, 8 Ohio C. C. (N. S.) 290; McLean v. Bryer, 24 R. I. 599, 54 Atl. 373; Nat. Exch. Bank v. Lubrano (R. I.), 68 Atl. 944; Germania Nat'l Bank v. Mariner, 129 Wis. 544, 109 N. W. 574.

One indorsing a note in blank before delivery, without indicating his intention to be bound otherwise, is an indorser. J. W. Perry Co. v. Taylor Bros., 62 S. E. 423, N. C. 1908.

The signing by the payees of a note of a guaranty of payment combined with a waiver of demand, notice, and protest constitute the signers indorsers, and not guarantors, and when no indorsee is named the subsequent delivery of the instrument to one who takes it in due course and for value passes title. Voss v. Chamberlain, 117 N. W. 269, Ia., 1908.

One who indorses negotiable paper in blank before delivery to give credit to the acceptors or makers is an "indorser" within the Negotiable Instruments Law. Haddock, Blanchard & Co. v. Haddock, 85 N. E. 682, 103 N. Y. S. 584.

Sections 113 and 114 of the Negotiable Instruments Law merely create a *prima facie* liability as indorser and the real contract can be shown, as between the immediate parties; it is not necessary that the indorsement should be accompanied by appropriate words in writing to show an intent to be bound in some other capacity. Bank of Memphis v. Brisley, — Tenn. —, 113 S. W. 390.

Under Sec. 113 Negotiable Instruments Law an indorser in blank who is not the original maker is liable as an indorser and not as a principal obligor. Roessle v. Lancaster, 114 N. Y. S. 387.

This section changes the former rule in this state, which held that persons not payees who indorsed their names on the back of an instrument were *prima facie* joint makers. Walker v. Dunham (Mo. 1909), 115 S. W. 1086.

Construing corresponding provision of English Bills of Exchange Act: Sec. 56. See, Glenie v. Bruce Smith (1907), 2 K. B. 507; Jenkins v. Coomber (1898), 2 Q. B. 168.

1a—The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Baumerster v. Kuntz, — Fla. —, 42 So. 886.

§ 114 (64). Liability of irregular indorser. Where a person, not otherwise a party to an instrument, places thereon his

signature in blank before delivery, he is liable as indorser in accordance with the following rules:[1, 1a]

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

See text, § 109.

Cross sections: 91 (52), 114 (64-1), 202 (121), 160 (89), 113 (63), 118 (68), 116 (66), 92 (53), 201 (120-1), 142 (82-3), 160 (89), 180 (109), 205 (124).

1—This section construed: Thorp v. White, 188 Mass. 333, 74 N. E. 592; Quimby v. Varnum, 190 Mass. 211, 76 N. E. 671; Leonard v. Drapier, 187 Mass. 536, 73 N. E. 644, *semble*.

Liability of irregular indorser to payee and subsequent parties: Rouse v. Wooten, 140 N. C. 557, 53 S. E. 430; Wilson v. Hendee (N. J.), 66 Atl. 413; McLean v. Bryer, 24 R. I. 599, 54 Atl. 373.

Treasurer omitted title by mistake: Germania Nat. Bank v. Mariner, 129 Wis. 544, 109 N. W. 574.

Liable as indorser: Dorney v. O'Keefe, 26 R. I. 591, 59 Atl. 929, *semble;* Rohn v. Consolidated Butter and Egg Co., 30 Misc. R. 725, 63 N. Y. S. 265.

Person signing in blank before delivery is indorser: Farquhar Co. v. Highman (N. Dak.), 112 N. W. 557; McLean v. Bryer, 24 R. I. 599, 54 Atl. 373; Deahy v. Choquet, 28 R. I. 338, 67 Atl. 421; Toole v. Crafts, 193 Mass. 110, 78 N. E. 775; Gibbs v. Guaraglia (N. J.), 67 Atl. 81; Peck v. Easton, 74 Conn. 456, 51 Atl. 134; In re Swift, 106 Fed. Rep. 65. See also Wilson v. Hendee (N. J.), 66 Atl. 413.

Evidence of intention of indorser to be liable not necessary: Thorp v. White, 188 Mass. 333, 74 N. E. 592; Baumeister v. Kuntz (Fla.) 42 So. 886; Far Rockaway Bank v. Norton, 186 N. Y. 484, 79 N. E. 709; Kohn v. Consolidated Co., 30 Misc. Reports 725, 66 N. Y. Sup. 265; Corn v. Levey, 97 App. Div. 48, 89 N. Y. S. 658; McMoran v. Lange, 25 App. Div. 11, 48 N. Y. S. 1000 *semble*.

Contrary to statute: Rockfield v. First Nat. Bank (Ohio) 83 N. E. 392.

Indorser liable to payee who was also maker and who indorsed and transferred instrument but was compelled to take it up: Haddock v. Haddock, 118 App. Div. 412, 103 N. Y. S. 584. See, Steele v. McKinley, 5 App. Cas., 754. See also, Wilson v. Hendee *supra*, sec. 64.

The Negotiable Instruments Law changes the rule that a person who puts his name on the back of bills or notes before delivery is presumed a second indorser and not liable to the payee, and such an indorser is presumed to be liable in accordance with the express language of the statute. Haddock, Blanchard & Co. v. Haddock, 85 N. E. 682, 103 N. Y. S., 584.

Sections 113 and 114 of the Negotiable Instruments Law merely cre-

ate a *prima facie* liability as indorser and the real contract can be shown, as between the immediate parties it is not necessary that the indorsement should be accompanied by appropriate words in writing, to show an intent to be found in some other capacity. Bank of Memphis v. Busley (Tenn.), 113 S. W. 390.

L agrees to act as guarantor of the performance of a lease for K. He indorses in blank a note given by K, in part payment of the purchase price of certain furniture. Held that L was an indorser and not an original promissor. Roessle v. Lancaster, 114 N. Y. S. 387.

Construing corresponding provision of the English Bills of Exchange Act: See 38 (2); Jenkins & Sons v. Coomber (1898), 2 Q. B. 168.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Some jurisdictions deemed a joint maker: Melton v. Brown, 25 Fla. 461; Schroeder v. Turner, 68 Md. 506; Logan v. Ogden, 101 Tenn. 393; National Exchange Bank v. Cumberland Lumber Co., 100 Tenn. 479; Bank of Jamaica v. Jefferson, 92 Tenn. 537; Good v. Martin, 95 U. S. 93.

In some states prior to the statutes a person signing in blank before delivery was *prima facia* deemed a first indorser: Blakselee v. Hewett, 76 Wis. 341.

In some states he was deemed a second indorser: Philps v. Vischer, 50 N. Y. 69; Bacon v. Burnham, 37 N. Y. 614; Cogswell v. Hayden, 5 Oregon 22; Deering v. Creighton, 19 Oregon 118; Central Nat. Bank v. Dreydoppel, 134 Pa. St. 499; Eilbert v. Finkbeiner, 68 Pa. St. 243.

Could rebut presumption by parol proof: Coulter v. Richmond, 59 N. Y. 478.

In some states he was deemed a joint maker: Dow. Law Book v. Godfrey, 126 Mich. 521.

The statute has changed the law in many states, including Michigan, New York, New Jersey, Rhode Island, Ohio, and now demand and notice of dishonor must be shown before an irregular indorser can be held. Still others have deemed him as guarantor: Ranson v. Sherwood, 26 Conn. 437; Webster v. Cobb, 17 Ill. 459; Knight v. Dunsmore, 12 Iowa 35; Chandler v. Westfall, 30 Tex. 477; Childs v. Wyman, 44 Me. 441.

§ 115 (65). Warranty; where negotiation by delivery, et cetera. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:[1]

1. That the instrument is genuine and in all respects what it purports to be;[1a] and

2. That he has a good title to it;[2a] and

3. That all prior parties had capacity to contract;[3a] and

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.[4a]

But when the negotiation is by delivery only, the warranty ex-

tends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.[5a]

See text, § 123.

Cross section: 116 (66).

1—This section construed: Smith v. Bradley (N. Dak.), 112 N. W. 1062; Willard v. Crook, 21 App. D. C. 237; Dill v. White, 132 Iowa 327, 109 N. W. 909.

Construing corresponding provision of English Bills of Exchange Act: See 58 (1), (2), (3).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Implied warranty: Giffert v. West, 37 Wis. 115.

Genuine instrument: Whitney v. National Bank of Potsdam, 45 N. Y. 303; Canal Bank v. Bank of Albany, 1 Hill 287; Challiss v. Crum, 22 Kan. 157; Littauer v. Goldman, 72 N. Y. 506; Herrick v. Whitney, 15 Johns, 240; Coolidge v. Brigham, 5 Met. 68; Wood v. Sheldon, 42 N. J. L. 421; Bill v. Dagg, 60 N. Y. 528; Aldrich v. Jackson, 5 R. I. 218; Allen v. Clark, 49 Vt. 390; Hannun v. Richardson, 48 Vt. 508.

2a—Good title: Gompertz v. Bartlett, 23 L. J. Q. B. 65; Meridian Nat. Bank v. Gallaudet, 120 N. Y. 298, 303.

3a—Capacity of prior parties: Littauer v. Goldman, 72 N. Y. 506, 509; Rogers v. Walsh, 12 Neb. 28; Lobdell v. Baker, 3 Metc. (Mass.) 469. Compare Meyer v. Richards, 163 U. S. 385; Wood v. Sheldon, 42 N. J. Law, 425; Otis v. Cullum, 92 U. S. 448.

4a—No knowledge that impair validity: People's Bank v. Bogart, 81 N. Y. 106; Dasham v. Willman, 74 Wis. 474.

5a—Corporate securities: Otis v. Cullom, 92 W. S. 448.

§ 116 (66). Liability of general indorser. Every indorser who indorses without qualifications, warrants to all subsequent holders in due course:[1, 1a]

1. The matter and things mentioned in subdivisions one, two, and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

See text, § 123.

Cross sections: 114 (64), 205 (124), 160 (89), 180 (109), 200 (119-5), 1 (2).

1—This section construed: Leonard v. Draper, 187 Mass. 536, 73 N. E. 144; Rockfield v. First Nat. Bank, 8 Ohio C. C. (N. S. 290); Willard v. Crook, 21 App. D. C. 237; Packard v. Windholz, 88 App. Div. 365, 84 N. Y. S. 666, affirmed without opinion, 180 N. Y. 549; Williamsburgh Trust Co. v. Tum Suden, 120 App. Div. 518, 105 N. Y. S. 335; Farmers' Bank v. Bank of Rutherford, 115 Tenn. 64, 88 S. W. 939; First Nat. Bank v. Gridley, 112 App. Div. 398, N. Y. S. 445; Hopkins v. Merrill, 79 Conn. 626, 66 Atl. 174.

Under Negotiable Instruments Law, Laws 1897, p. 734, c. 612, § 116, an indorser of a note cannot defend on the ground that the same was void because of usury in its inception. Horowitz v. Wollowitz, 110 N. Y. S. 972.

An indorser of a note in blank warrants to all subsequent holders in due course that he will pay the note on receiving due notice that the maker, on demand at the proper time has failed to pay; one who is both the maker and holder of a note indorsed in blank cannot sue the indorser on the note. Abramowitz v. Abramowitz, 113 N. Y. S. 798.

Construing corresponding provision of English Bills of Exchange Act: Sec. 55 (2).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Subsequent holders: Nat. Bank v. Seaboard Nat. Bank, 114 N. Y. 28; United States v. American Exchange Nat. Bank, 70 Fed. Rep. 232.

Matters and things in other subdivision, a genuineness of instrument: Fish v. First Nat. Bank, 42 Mich. 203.

But an indorser for collection does not so warrant: United States v. American Exchange National Bank, 70 Fed. Rep. 232; National Park Bank v. Seaboard Bank, 114 N. Y. 28.

This is changed by the act Guaranty of Prior Indorsements: Cordon v. Pearc, 43 Md. 83; Prescott Bank v. Caverly, 7 Gray 216, 220; Lambert v. Park, Salk 127; Critchlow v. Parry, 2 Camp 182; McConeghy v. Kirk, 66 Pa. St. 200; Dalrymple v. Hillenbrand, 62 N. Y. 5.

Admits capacity of corporation: Glidden v. Chamberlin, 167 Mass. 486. See Southern Loan Co. v. Morris, 2 Pa. 175.

True in case of accommodation indorser and fact is known to hold: Oriental Bank v. Gallo, 112 App. Div. 360.

Indorser warrants Sunday contract: Prescott National Bank v. Butler, 157 Mass. 548.

Also a gaming note: Unger v. Boos, 1 Harr. 601.

Indorser liable for stipulated attorney's fee: Benn v. Kutzachan, 24 Ore. 28, 32 Pac. 763.

Indorser's duty to take up note: Day v. Ridgway, 117 Pa. St. 303.

Parol evidence to vary liability inadmissible: Eaton v. McMahon, 42 Wis. 484; Smith v. Caro, 9 Ore. 278.

Holder not bound to make provision for breach: Bartlett v. Isbell, 31 Conn. 297.

All indorsements on same footing: Torbert v. Montague, 38 Colo. 325; Charles v. Demo, 42 Wis. 56, 58.

Executors cannot bind estate of the testator: Packard v. Dunfree, 119 App. Div. (N. Y.) 599.

§ 117 (67). Liability of indorser where paper negotiable by delivery. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.[1a]

See text, § 123.

Construing corresponding provisions of English Bills of Exchange Act: See sec. 56. Jenkins v. Coomber (1898), Q. B. 168; Glene v. Bruce Smith (1907), K. B. 507.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Tom v. Shaw, 10 Ind. 469; Covurs v. Meyers, 75 Md. 406, 23 Atl. 850; Smith v. Rawson, 61 Ga. 208; Blackman v. Layman, 63 Ala. 547; Garvin v. Wiswell, 83 Ill. 218; Brush v. Administrators, 3 Johns. 439.

Indorser of non-negotiable note not liable as indorser: Haber v. Brown, 101 Calif. 445, 35 Pacif. 1035.

§ 118 (68). Order in which indorsers are liable. As respects one another, indorsers are liable *prima facie* in the order in which they indorse;[1a] but evidence is admissible to show that as between or among themselves they have agreed otherwise.[2a] Joint payees or joint indorsees[3a] who indorse are deemed to indorse jointly and severally.[1]

See text, § 123.

Cross sections: 114 (64-12), 180 (109), 201 (120-4), 113 (63).

1—This section construed: Baumeister v. Kuntz (Fla.), 42 So. 886; Haddock v. Haddock, 118 App. Div. 412, 103 N. Y. S. 584; State Bank v. Kahn, 49 Misc. Rep. 500, 98 N. Y. S. 858; Morgan v. Thompson, 72 N. J. Law 244, 62 Atl. 410; Wilson v. Hendee (N. J.), 66 Atl. 413.

Construing corresponding provision of English Bills of Exchange Act: See 32 (5).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Indorsers liable in order of their indorsement: Kirschner v. Conklin, 40 Conn. 77, 81; Clapp v. Rice, 13 Gray 403; How v. Merrill, 15 Cush. 88; Shaw v. Knox, 98 Mass. 214; Egbert v. Hannon, 34 Misc. 597; Easterly v. Barker, 66 N. Y. 433; Kelley v. Burroughs, 102 N. Y. 93; Bank of U. S. v. Beirne, 1 Gratt. 234; McDonald v. Magreuder, 3 Peters 470; McCarty v. Roots, 21 How. (U. S.) 432; Hagaue v. Davis, 8 Gratt. 4; Wood v. Bedford, 3 Harris & J. 125; Harrah v. Doherty, 111

Mich. 175; Talott v. Gagswell, 3 Day 512; Wolf v. Hostetter, 182 Pa. St. 292; Russ v. Sadler, 197 Pa. St. 51.

2a—Evidence admissible to show different agreement: Reinpart v. Schall, 69 Md. 353; Patch v. Washburn, 82 Mass. 82; Farwell v. Ensign, 66 Mich. 600; Easterly v. Barber, 66 N. Y. 433; Shenfelt v. Moore, 93 Mich. 564; Witherow v. Slaybach, 158 N. Y. 649; Breneman v. Furniss, 90 Pa. St. 186; Bank of Jamaica v. Jefferson, 92 Tenn. 537; Morrison Lumber Co. v. Lookout Mt. Hotel Co., 92 Tenn. 6; Hale v. Danforth, 46 Wis. 554.

Agreement may be evidenced by circumstances of case: Hagerthy v. Phillips, 83 Me. 336; Clapp v. Rice, 13 Gray 403; McDonald v. Whitfield, L. R. 8 App. Case 733.

Evidence to show an agreement for a joint liability: Edelen v. White, 6 Bush. 408; Easterly v. Barber, 66 N. Y. 433; Phillips v. Preston, 5 How. (U. S.) 278. *Contra*, Johnson v. Ramsay, 43 N. J. Law 279.

Evidence to show agreement that one was to be prior indorser: Slagel v. Rust, 4 Gratt. 274; Slack v. Kirk, 67 Pa. St. 380; Runhart v. Scholl, 69 Md. 352. The statute has changed the law in New Jersey.

Evidence inadmissible to change unambiguous indorsement: Hitchcock v. Frackelton, 116 Mich. 487; Phelps v. Abbott, 114 Mich. 88. But see Kulenkamp v. Groff, 71 Mich. 675.

3a—At common law joint payees indorsing were liable jointly only: Russ v. Sadler, 197 Pa. St. 51, 46 Atl. 903; Lane v. Stacy, 8 Allen 41.

§ 119 (69). Liability of agent or broker. Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section 115, of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent.[1a]

See text, § 123.

Section 115 was "Section 65" in original New York act by mistake.

Sec. 69a of the Illinois Law provides: "Whenever any bill of exchange drawn or indorsed within this state and payable without this state is duly protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay such bill at the current rate of exchange and with legal interest from the time such bill ought to have been paid until paid, together with the costs and charges of protest, and on bills payable in the United States in case suit has to be brought thereon and on bills payable without the United States with or without suit 5% damage in addition.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Cabot Bank v. Morton, 4 Gray 561; Lyons v. Miller, 6 Gratt. (Va.) 439; Meridian National Bank v. Gallaudet, 120 N. Y. 289; Worthington v. Cowles, 12 Mass. 30.

ARTICLE VII.

PRESENTMENT FOR PAYMENT.

§ 130 (70). Effect of want of demand on principal debtor.
131 (71). Presentment where instrument is not payable on demand.
132 (72). What constitutes a sufficient presentment.
133 (73). Place of presentment.
134 (74). Instrument must be exhibited.
135 (75). Presentment where instrument payable at bank.
136 (76). Presentment where principal debtor is dead.
137 (77). Presentment to persons liable as partners.
138 (78). Presentment to joint debtors.
139 (79). When presentment not required to charge the drawer.
§ 140 (80). When presentment not required to charge the indorser.
141 (81). When delay in making presentment is excused.
142 (82). When presentment may be dispensed with.
143 (83). When instrument dishonored by non-payment.
144 (84). Liability of persons secondarily liable, when instrument dishonored.
145 (85). Time of maturity.
146 (86). Time; how computed.
147 (87). Rule where instrument payable at bank.
148 (88). What constitutes payment in due course.

Sections 130 to 148 above are the sections of the New York Law.

Sections 70 to 88 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 70 to 88 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Illinois, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: As sections 3373 to 3391 in Arizona, as 77 to 95 in Kansas and Oregon, as 89 to 107 in Maryland, as 72 to 90 in Michigan, as 70 to 87 in Nebraska, as 3173o to 3174f in Ohio, as 78 to 96 in Rhode Island, as 1678 to 1678-18 in Wisconsin.

§ 130 (70). Effect of want of demand on principal debtor. Presentment for payment is not necessary in order to charge

the person primarily liable on the instrument;[1a] but if the instrument is, by its terms, payable at a special place,[2a] and he is able and willing to pay it there at maturity, and has funds there available for that purpose, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.[1, 3a]

See text, § 156.

Cross sections: 111 (61), 116 (66), 142 (82-3), 160 (89), 133 (73), 135 (75), 114 (64-1), 180 (109), 142 (82-3).

The Wisconsin act (§ 1678) omits that part of the first sentence following the words "primarily liable on the instrument." Kansas, New York and Ohio add the words "and has funds there available for that purpose" after the words "at maturity."

1—This section construed: Florence Oil Co. v. First Nat. Bank, 38 Colo. 119, 88 Pac. 182; Hoppins v. Merill, 79 Conn. 626, 66 Atl. 174; Baumesstes v. Kuntz (Fla.), 42 So. 886; Farmers Nat. Bank v. Venner, 192 Mass. 531, 78 N. E. 540; Hyman v. Doyle, 53 Misc. R. 597, 103 N. Y. S. 778; German American Bank v. Milliman, 31 Misc. R. 87, 65 N. Y. S. 242; Rouse v. Wooten, 140 N. C. 557, 53 S. E. 430; Nelson v. Grondahl, 13 N. Dak. 363, 100 N. W. 1093; Galbraith v. Shepard, 43 Wash. 698, 86 Pac. 1113; In re Swift, 106 Fed. Rep. 65.

Due presentment and notice of dishonor are necessary to charge the indorser. J. W. O'Bannon Co. v. Curran, 113 N. Y. S. 359.

Construing corresponding provisions of English Bills of Exchange Act: Sec. 52 (1), (2); 45, 87 (2); 87 (1). Presentment, Gordon v. Kerr, 25 Sess. Cas. 570; Josolyne v. Roberts, 77 J. K. B. 845; 2 K. B. (1909) 349; 99 Law Times 28.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Presentment for payment not necessary: Harrisburg Trust Co. v. Shufeldt, 78 Fed. 292; American Nat. Bank v. Junk Bros., 94 Tenn. 624, 30 S. W. 753, 28 L. R. A. 492; Greeley v. Whitehead, 35 Fla. 523, 17 So. 643; Roberts v. Hawkins, 70 Mich. 566; Gage v. Lewis, 68 Ill. 605; Torrey v. Foss, 40 Me. 74; Rumball v. Ball, 10 Md. 38; Wright v. Vermont Ins. Co., 164 Mass. 302; Hansborough v. Gray, 3 Gratt. 340; Payson v. Whitcomb, 15 Pick. 212; Hills v. Plan, 48 N. Y. 520; Bush v. Gilman, 45 App. Div. (N. Y.) 89; Franpton v. Coulson, 1 Wils, 33; Morton v. Elam, 2 M. & W. 461; Walton v. Mascall, 13 M. & W. 452; Howard v. Boorman, 17 Wis. 459.

2a—Not necessary to prove demand at place of payment: Lockwood v. Crawford, 18 Conn. 361; Bond v. Starrs, 13 Conn. 416; Lazur v. Haran, 55 Iowa 77; Reeve v. Pack, 6 Mich. 240; McIntyre v. Mich. State Ins. Co., 52 Mich. 188; Parker v. Stroud, 98 N. Y. 379, 384; Hills v. Place, 48 N. Y. 520, 523; Armsterds v. Armsterds, 10 Leigh 525; Wallace v. McConnell, 13 Peters 136; Bank v. Zorn, 14 S. C. 444; Insurance Co. v. Wilson, 29 W. Va. 543; Howard v. Booman, 17 Wis. 459; Cox v. National Bank, 100 U. S. 713.

Draft drawn on man residing in New York, her laws determine

question of presentment, etc.: Sylvester v. Crohan, 138 N. Y. 494; Hybernia Bank v. Lacomb, 84 N. Y. 367.

Bill drawn in New York on man living in foreign country: Amsinck v. Rogers, 189 N. Y. 252.

3a—Indorser entitled to demand and notice: Whittier v. Collins, 15 R. I. 44; Magruder v. Union Bank, 3 Pet. 90; Buck v. Cotton, 2 Conn. 126; Lawrence v. Langley, 14 N. H. 70; Moses v. Ela, 43 N. H. 557.

Bringing suit on a certificate of deposit sufficient demand: Tripp v. Curtemius, 36 Mich. 494; Beardsley v. Webber, 104 Mich. 494; Hunt v. Divine, 37 Ill. 137; Lynch v. Goldsmith, 64 Ga. 42; Curran v. Witter, 68 Wis. 16. See also, Riddle v. First Nat. Bank, 27 Fed. 503; McGough v. Jamison, 107 Pa. St. 336; Shute v. Pacific Nat. Bank, 136 Mass. 487; Pardee v. Fish, 60 N. Y. 265.

§ 131 (71). Presentment where instrument is not payable on demand; (where payable on demand). Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.[1, 1a]

See text, § 159.

Cross sections: 145 (85), 4 (193), 241 (144), 322 (186), 26 (7-1), 133 (73), 132 (72-2), 142 (82-3), 135 (75).

The Nebraska act omits the remainder of this section after the words, "time after its issue."

1—This section construed: Congress Brewing Co. v. Habenicht, 83 App. Div. 141, 82 N. Y. S. 481; German-American Bank v. Milliman, 31 Misc. R. 87, 65 N. Y. S. 242.

Burden of proof of presentment of demand instruments: Merritt v. Jackson, 181 Mass. 69, 62 N. E. 987; Commercial National Bank v. Zimmerman, 185 N. Y. 210, 77 N. E. 1020. This case overrules German-American Bank v. Mills, 99 App. Div. 312, 91 N. Y. S. 142.

Reasonable time: Schlesinger v. Schultz, 110 App. Div. 356, 96 N. Y. S. 383; Citizens' Bank v. First Nat. Bank, — Iowa —, 113 N. W. 481, *semble*.

Reasonable time as to checks: Plover Savings Bank v. Woodie, — Iowa —, 110 N. W. 29; Citizens' Bank v. First National Bank, — Iowa —, 113 N. W. 481; Gordon v. Devine, 194 Mass. 418, 80 N. E. 505.

As to bills of exchange: Columbian Banking Co. v. Bowen, — Wis. —, 114 N. W. 451.

Construing corresponding provisions of English Bills of Exchange: Sec. 45 (1), 45 (2), Bill, 86 (1).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Reasonable time after issue: Brooks v. Mitchell, 9 M. & W. 15; Chartered Bank v. Dickson, L. R. 3 P. C. 574; Martin v. Winslow, Fed. Cas. No. 9172; Oley v. Miller, 74 Conn. 304, 308; Guild v. Goldsmith, 9 Fla. 212; Field v. Nickerson, 13 Mass. 131; Mudd v. Harper, 1 Md. 110; Phoenix Ins. Co. v. Guy, 13 Mich. 191; Home Savings Bank v. Hosie, 119 Mich. 116; Seaver v. Lincoln, 21 Pick. 267; Spencer v. Drake, 84 App. Div. (N. Y.) 272; Tyler v. Young, 30 Pa. St. 143, 144; Perry v. Green, 19 N. J. L. 61; Leidy v. Tammany, 9 Watts, 353; Shutts v. Fingar, 100 N. Y. 541; Turner v. Iron Chief Mining Co., 74 Wis. 355; Bassenhorst v. Wilby, 45 Ohio St. 333, 13 N. E. 75.

Negotiable certificate of deposit: Lindsel v. McClellan, 18 Wis. 481; Burch v. Fisher, 51 Mich. 36; Nat. Bank v. Washington County Nat. Bank, 5 Hun 605.

Reasonable time for bills of exchange applies to check: Singer Manufacturing Co. v. Summers, 143 N. C. 103.

Presentment must be made according to the tenor of the instrument: Langenberger v. Kroeger, 48 Cal. 147.

When material facts are not disputed the question of reasonable time is one of law to be decided by the judge: Turner v. Iron Chief Mining Co., 74 Wis. 355; Parker v. Reddick, 65 Miss. 242.

When facts are complicated and conflicting: Minlman v. D'Equino, 2 H. Black 565.

§ 132 (72). What constitutes sufficient presentment. Presentment for payment, to be sufficient, must be made:[1]

1. By the holder, or by some person authorized to receive payment on his behalf;[1a]
2. At a reasonable hour on a business day[2a]
3. At a proper place as herein defined;
4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

See text, § 158.

Cross sections: 133 (73), 135 (75), 13 (71).

1—This section construed: German-American Bank v. Milliman, 31 Misc. R. 87, 65 N. Y. S. 242; Nelson v. Grondahl, 13 N. Dak. 363, 100 N. W. 1093.

Reasonable hour: Columbian Banking Co. v. Bowen, — Wis. —, 114 N. W. 451.

Construing corresponding provision of English Bills of Exchange Act: Sec. 45 (3).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Presentment by holder or representative: Hartford Bank v. Stedman, 3 Conn. 489; Hartford Bank v. Berry, 17 Mass. 93; Shedd v. Brett, 1 Pick. 401; Barnett v. Ringgold, 80 Ky. 289; Weber v.

Orton, 91 Mo. 680; Jackson v. Love, 82 N. C. 405; Sussex Bank v. Baldwin, 2 Harr. (N. Y.) 487; Doubleday v. Kress, 50 N. Y. 410; Blakeslee v. Hewett, 16 Wis. 341; Crist v. Crist, 1 Carter (Ind.) 570.

One who holds paper as collateral security must make presentment for payment: Phoenix Ins. Co. v. Allen, 11 Mich. 501; Whitten v. Wright, 34 Mich. 92; Peacock v. Pursell, 14 C. B. (N. S.) 728.

2a—Reasonable hour: Dan v. Sawyer, 22 Me. 244; Farnsworth v. Allen, 4 Gray, 453; Estes v. Tower, 102 Mass. 65; Salt Springs National Bank v. Burton, 58 N. Y. 430; Waring v. Betts, 90 Va. 46, 53; Triggs v. Newnham, 1 Car. & P. 631; Wilkins v. Jodis, 2 B. & Ad. 188.

§ 133 (73). Place of presentment. Presentment for payment is made at the proper place;[1]

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

See text, § 161.

Cross sections: 135 (75), 26 (7-1), 13 (71), 142 (82-3).

1—This section construed: Smith v. Shippers' Oil Co., — La. —, 45 So. 533; German-American Bank v. Milliman, 31 Misc. R. 87, 65 N. Y. S. 242; Schlesinger v. Schultz, 110 App. Div. 356, 96 N. Y. S. 383; Congress Brewing Co. v. Habenicht, 83 App. Div. 141, 82 N. Y. S. 481; Delson v. Grondahl, 13 N. D. 363, 100 N. W. 1093.

Where a note is payable at one of several branches by a trust company in the same country, presentation at the main office of the company, which receives and retains the note is sufficient as against an indorser under Negotiable Instruments Law, Laws 1897, p. 736, c. 612: Iron-clad Mfg. Co. v. Sackin, 110 N. Y. S. 161.

Where a note is payable at a designated branch office of a trust company, presentation at the principal office of the trust company on the due date of the note and at the designated bank after banking hours on the following day is not sufficient as against an indorser: Iron-clad Mfg. Co. v. Sackin, 114 N. Y. S. 42.

Construing corresponding provisions of English Bills of Exchange Act: Secs. 45 (4) (a), 45 (4) (b), 45 (4) (c), 45 (4) (d).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

No place of payment specified or address given: King v. Crom-

well, 61 Me. 244; Ricketts v. Pendleton, 14 Md. 320; Sasscer v. Stone, 10 Md. 98; Nailor v. Bowie, 3 Md. 251; Farmsworth v. Mullen, 164 Mass. 112, 41 N. E. 131; Parker v. Kellogg, 158 Mass. 90; McIntyre v. Mich. State Ins. Co., 52 Mich. 188; Gates v. Beecher, 60 N. Y. 518, 522; Holtz v. Boppe, 37 N. Y. 634; West v. Brown, 6 Ohio St. 542; Clark v. Seabright, 135 Pa. St. 173; Baumgardner v. Reeves, 35 Pa. St. 250; Struthers v. Blake, et al., 30 Pa. St. 139; Pierce v. Struthers, 27 Pa. St. 249, 254; Anderson v. Drake, 14 Johns. 114; King v. Holmes, 11 Pa. St. 456; Oxnard v. Varmon, 111 Pa. St. 193; Sulsbacker v. Bank of Charleston, 86 Tenn. 201; Blodgett v. Durgen, 32 Vt. 361; Wallace v. Crilly, 46 Wis. 577; Reinke v. Wright, 93 Wis. 368, 67 N. W. 737.

If the maker leaves the state subsequent to making the note present at his last known place of business: Nailer v. Bowie, 3 Md. 251.

If primary party changes his residence due diligence must be used to ascertain new residence: Nailor v. Bowie, 3 Md. 251; Taylor v. Snyder, 3 Den. 145; Foster v. Julian, 24 N. Y. 28; Pierce v. Cate, 12 Cush. 190. See, Ducan v. McCullough, 4 Serg. R. 48.

When place of payment is specified: Cox v. Nat. Bank, 100 U. S. 704; Brooks v. Higby, 11 Hun 235; Walcott v. Van Santvoord, 17 Johns. 248; Strulters v. Kendall, 41 Pa. St. 214, Am. Dec. 610.

§ 134 (74). Instrument must be exhibited. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.[1]

See text, § 158.

Cross section: 142 (82-3).

1—This section construed: Congress Brewing Co. v. Habenicht, 83 App. Div. 141, 82 N. Y. S. 481.

Not necessary on demand note: Church v. Stevens, 107 N. Y. S. 310; Gilpin v. Savage, 112 N. Y. S. 802.

Construing corresponding provisions in English Bills of Exchange Act: Sec. 52 (4).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Hinsdale v. Miles, 5 Conn. 331; Lockwood v. Crawford, 18 Conn. 361; King v. Cromwell, 61 Me. 244; Legg v. Vinman, 165 Mass. 555; Freeman v. Boynton, 7 Mass. 483; Draper v. Clemens, 7 Mo. 52; Fall River Union Bank v. Willard, 5 Metcalf 216; Ocean Nat. Bank v. Fant, 50 N. Y. 474, 476; Musson v. Lake, 4 How. 262; Smith v. Rockwell, 2 Hill 482; Waring v. Belts, 90 Va. 46, 51; Honsard v. Robinson, 7 B. & C. 90.

§ 135 (75). Presentment where instrument payable at bank. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time dur-

ing the day, in which case presentment at any hour before the bank is closed on that day is sufficient.[1]

See text, § 161.

Nebraska omits the remainder of the section after the words "during banking hours."

1—This section construed: German-American Bank v. Millinan, 31 Misc. R. 87, 65 N. Y. S. 242.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Checopee Bank v. Philadelphia Bank, 8 Wall. 641; People's Bank v. Keech, 26 Md. 521; Nash v. Brown, 165 Mass. 384; Shepard v. Chamberlain, 8 Gray, 225; Way v. Butterworth, 108 Mass. 509; Reed v. Wilson, 41 N. J. Law 29; Grand Bank v. Blanchard, 23 Pick. 305, 306; Mechanics' Bank v. Mechanics' Bank, 6 Metc. 13, 24; Boston Bank v. Hodges, 9 Pick. 420; Martin v. Smith, 108 Mich. 278; Bank of Syracuse v. Hollister, 17 N. Y. 46; Bank of Utica v. Smith, 18 Johns. 230; Salt Springs National Bank v. Burton, 58 N. Y. 430; Dykman v. Northridge, 1 App. Div. (N. Y.) 26; West v. Brown, 6 Ohio St. 542; Hallowell v. Carry, 41 Pa. St. 322; Hazard v. Spencer, 17 R. I. 561; Waring v. Belts, 90 Va. 46; Columbia Banking Co. v. Bowen (Wis.), 114 N. W. 451.

Time when suit may be brought: Blackman v. Nearing, 43 Conn. 60; Church v. Clark, 21 Pick. 309; Humphreys v. Sutcliffe, 192 Pa. St. 336; Citizens' Bank v. Lay, 80 Va. 436, 440.

§ 136 (76). Presentment where principal debtor is dead. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence he can be found.[1]

See text, § 162.

Cross sections: 169 (98), 167 (96).

1—This section construed: Reed v. Spear, 107 App. Div. 144, 94 N. Y. S. 1007.

Construing corresponding provisions of English Bills of Exchange Act: Sec. 45 (7).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Gowen v. Moore, 25 Me. 16; Toby v. Maurian, 7 La. 493; Hall v. Burr, 12 Mass. 86; Oriental Bank v. Blake, 22 Pick. 206; Landry v. Straubury, 10 La Ann. 484; Magruder v. Union Nat. Bank, 3 Pet. 87; Bank of Wash. v. Reynolds, Fed. Cas. No. 954.

There must be legal proof of his death: Weens v. Farmers' Bank, 15 Md. 231.

§ 137 (77). Presentment to persons liable as partners. Where the persons primarily liable on the instrument are liable

as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.[1]

See text, § 162.

1—Construing corresponding provisions of English Bills of Exchange Act: See 45 (6).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Coster v. Thomason, 19 Ala. 717; Mount Pleasant Branch Bank v. McLeran, 26 Ia. 306; Fourth Nat. Bank v. Henschuh, 52 Mo. 207; Gates v. Beecher, 60 N. Y. 518; Cayuga County Bank v. Hunt, 2 Hill, 635; Crowley v. Barry, 4 Gill 194.

§ 138 (78). Presentment to joint debtors. Where there are several persons not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.[1]

See text, § 162.

1—Construing corresponding provisions of English Bills of Exchange Act: See 45 (6).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Blake v. McMillen, 33 Ia. 150; Arnold v. Dresser, 8 Allen 435; Gates v. Beecher, 60 N. Y. 518, 523; Willis v. Green, 5 Hill 232; Shulto v. Fingar, 100 N. Y. 539; Benedict v. Schmieg, 13 Wash. 476; Davis v. Schmidt, 126 Wis. 461. But see, Harris v. Clark, 10 Ohio 6; Greenough v. Smead, 3 Ohio St. 416.

§ 139 (79). When presentment not required to charge the drawer. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.[1]

See text, § 156.

Cross sections: 185 (114-4), 114 (64-1), 142 (82-3).

1—This section construed: West Branch Bank v. Haines, — Iowa —, 112 N. W. 552; In re Swift, 106 Fed. Rep. 65.

Construing corresponding provisions of English Bills of Exchange Act: Sec. 46 (2), (c).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Kimball v. Bryan, 56 Iowa 632; Welch v. B. C. Taylor Mfg. Co., 82 Ill. 581; Gage Hotel Co. v. Union Bank, 171 Ill. 331; Beauregard v. Knowlton, 156 Mass. 395, 396; Carson, Pirie, Scott & Co. v. Fincher (Mich.), 101 N. W. 844; Cronyton v. Blair, 46 Mich. 1; Kingsley v. Robinson, 21 Pick. 327; Harness v. Davies Co. Savings Ass'n, 46 Mo. 357; Dukens v. Beal, 10 Pet. 572; Life Insurance Co. v. Pendleton, 112 U. S. 708.

§ 140 (80). When presentment not required to charge the indorser. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.[1]

See text, § 156.

Cross section: 186-3 (115).

1—This section construed: Luckenbach v. McDonald, 164 Fed. 296.

Construing corresponding provisions of English Bills of Exchange Act: Sec. 46 (2), (d).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Webster v. Mitchell, 22 Fed. 871; Holman v. Whiting, 19 Ala. 703; Witherow v. Slaybach, 158 N. Y. 660; Am. Nat. Bank v. Junk Bros., 94 Tenn. 624, 30 S. W. 753, 28 L. R. A. 492; McVeigh v. Bank, 28 Gratt. 785.

§ 141 (81). When delay in making presentment is excused. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.[1]

See text, § 160.

Cross section: 322 (186).

1—This section construed: Aebi v. Bank of Evansville, 124 Wis. 73, 102 N. W. 329.

Construing corresponding provision of English Bill of Exchange Act: Sec. 46 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Windham Bank v. Norton, 22 Conn. 213; Belden v. Lamb, 17 Conn. 457; Pier v. Heinricksoffen, 67 Mo. 163; House v. Adams, 48 Pa. St. 261; Wilson v. Senior, 14 Wis. 380.

§ 142 (82). When presentment may be dispensed with. Presentment for payment is dispensed with:[1]

1. Where after the exercise of reasonable diligence presentment as required by this act can not be made;
2. Where the drawee is a fictitious person;
3. By waiver of presentment express or implied.

See text, § 157.

Cross sections: 114 (64-1), 180 (109), 136 (76), 160 (89), 167 (96), 185-2 (114), 180 (109), 182 (111), 130 (70).

1—This section construed: Presentment dispensed with: Baumeister v. Kuntz, (Fla.) 42 So. 886; Reed v. Spear, 107 App. Div. 44, 94 N. Y. S. 1007.

Waiver of presentment: Forbert v. Montague (Colo.), 87 Pac. 1145; First National Bank of Pomeroy v. Buttery, — N. D. —, 116 N. W. 341; Congress Brewing Co. v. Habenicht, 83 App. Div. 141, 82 N. Y. S. 481; Toole v. Crafts, 193 Mass. 110, 78 N. E. 775, 82 N. E. 22; In re Swift, 106 Fed. Rep. 65.

Waiver must be specially pleaded: Galbraith v. Shepard, 43 Wash. 698, 86 Pac. 1113.

A note was made payable at the home of the maker on a certain street, and at maturity he was called up by telephone and asked what he was going to do about it and replied he would not pay it. Held sufficient presentment for payment, the statutory right of the maker to exhibition of the note being waived: Gilpin v. Savage, 112 N. Y. S. 802.

The defendant, knowing that the maker could not pay the notes when due, because its property was in the hands of a receiver in bankruptcy, in which he participated, impliedly waived presentment of the notes and notice of dishonor within the section of the Negotiable Instruments Law: J. W. O'Bannon Co. v. Curran, 113 N. Y. S. 359.

Construing corresponding provisions of English Bills of Exchange Act: Section 46 (2), (a), (b), (e).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Presentment dispensed with if after due diligence it cannot be made: Armstrong v. Thurston, 11 Md. 148; Wheeler v. Field, 6 Metc. 290; Martin v. Grabinski, 38 Mo. App. 359; Jackson v. Richards, 2 Caines 343; Bensonhurst v. Wilby, 45 Ohio St. 340; Hawley v. Jette, 10 Oregon 31; Smith v. Fisher, 24 Pa. St. 222; Reincke v. Wright, 93 Wis. 368; Eaton v. McMahon, 42 Wis. 484; Boyd v. Bank of Toledo, 32 Ohio St. 526; Annville Nat. Bank v. Kittaning, 106 Pa. St. 531; Smith v. Lownsdale, 6 Oregon 78; Burgettstown Nat. Bank v. Mill, 213 Pa. St. 456; Mayer v. Brothers' Appeal, 87 Pa. 129; Barley v. Weaver, 19 Pa. St. 396; Annville Nat. Bank v. Kettaning, 106 Pa. St. 531; Hale v. Danforth, 46 Wis. 554; Power v. Mitchell, 7 Wis. 159, 166.

Waiver of presentment: Davis v. Gowan, 19 Me. 447; Seldner v. Mount Jackson National Bank, 66 Md. 488; Brandt v. Mickle, 26 Md. 436; Quintance v. Goodrow, 16 Mont. 376, 41 Pac. 76; Cady v. Bradshaw, 116 N. Y. 188, 191, 192; Mechanics' Bank v. Griswold, 7 Wend. 165; Ross v. Hard, 71 N. Y. 14; Moore v. Alexander, 63 App. Div. (N. Y.) 100; Berkshire Bank v. Jones, 6 Mass. 524; Lou v. Howard, 11 Cush. 268, 270; Bank v. Richardson, 5 Pick. 436; Bond v. Farnham, 5 Miss. 170; Parr v. City Trust Company, 95 Md. 291, 300-301; Barker v. Parker, 6 Pick. 80.

In case maker is insolvent the holder has an immediate right of action against indorser without presentment to maker: Forbes v. Rowe, 48 Conn. 413; Hawkins v. Olson, 48 Ill. 277; Couch v. First Nat. Bank, 64 Ind. 92. But see, Oliver v. Munday, 3 N. J. L. 982.

As to when due diligence is a question of law and when a question of fact, see, Fourth Nat. Bank v. Henschen, 52 Mo. 207; Bank of Columbia v. Lawrence, 1 Pet. 578.

When waiver embodied in instrument subsequent indorser's bound; Lowry v. Steele, 27 Ind. 170.

When waiver written in connection with signature of an indorser affects him only: Wardman v. Thurston, 8 Cush. 157. But see, Parshley v. Heath, 69 Me. 90.

§ 143 (83). When instrument dishonored by non-payment. The instrument is dishonored by non-payment when:[1]

1. It is duly presented for payment and payment is refused or can not be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

See text, § 164.

Cross sections: 114 (64-1), 180 (109), 135 (75), 136 (76), 160 (89), 167 (96).

1—This section construed: Baumister v. Kuntz, — Fla. —, 42 So. 886; German-American Bank v. Milliman, 31 Misc. R. 87, 65 N. Y. S. 242; Reed v. Spear, 107 App. Div. 144, 94 N. Y. S. 1007.

Construing corresponding provisions of English Bills of Exchange Act: 47 (1).

§ 144 (84). Liability of person secondarily liable, when instrument dishonored. Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, accrues to the holder.[1]

See text, § 176.

Cross sections: 114 (64-1), 180 (109), 135 (75).

1—This section construed: Bannister v. Kuntz, — Fla. —, 42 So. 886; German-American Bank v. Milliman, 31 Misc. R. 87, 65 N. Y. S. 242.

Construing corresponding provisions of English Bills of Exchange Act: 47 (2); Kennedy v. Thomas (1894), 2 Q. B. 759.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Buck v. Freehold Bank, 37 N. J. Law 307; First Nat. Bank v. Wood, 71 N. Y. 405, 411; German-American Bank v. Niagara Cycle Co., 13 App. Div. (N. Y.) 450.

Conditional guarantees do not incur statutory liabilities: Cowles v. Peck, 55 Conn. 251; Summers v. Barrett, 65 Iowa 292; Costrique v. Barnabo (1884), 6 Q. B. 498.

§ 145 (85). Time of maturity. Every negotiable instrument is payable at the time fixed therein without grace. When

the day of maturity falls upon Sunday or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.[1]

See text, §§ 56, 159.

The Arizona, Kentucky and Wisconsin acts omit the sentence beginning "Instruments falling due," etc.

In the Colorado act (§ 85) this sentence is omitted, and the following substituted: "Instruments falling due on any day, in any place where any part of such day is a holiday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment during reasonable hours of the part of such day which is not a holiday."

The North Carolina act (§ 197) provides: "The laws now in force in this state with regard to days of grace shall remain in force and shall not be construed to be repealed by this act."

In Massachusetts this section has been modified (Laws 1899, c. 130) as follows: "On all drafts and bills of exchange made payable within this Commonwealth at sight, three days of grace shall be allowed, unless there is an express stipulation therefor to the contrary."

New Hampshire has a provision similar to that of Massachusetts.

The words "on becoming payable" were added to the New York act by amendment. They appear in the Kansas act.

1—This section construed: Presumption is that days of grace are still allowed by the laws of a sister state: Deinelman v. Brazier, 193 Mass. 588, 79 N. E. 812.

Construing corresponding provisions of English Bills of Exchange Act: 14 (1); Kennedy v. Thomas (1894), 2 Q. B. 759.

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Hichcock v. Hogan, 99 Mich. 124.

§ 146 (86). Time; how computed. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.[1]

See text, § 159.

1—See New York Statutory Construction Laws, sections 26, 27.

Construing corresponding provisions of English Bills of Exchange Act: Section 14 (2).

The following cases either do not cite the Negotiable Instruments

Law or were decided previous to the enactment of it: Rochner v. Knickerbocker Life Ins. Co., 63 N. Y. 163; Capital Nat. Bank v. Am. Exch. Nat. Bank, 51 Neb. 707; Campbell v. French, 6 T. R. 200.

§ 147 (87). Rule where instrument payable at bank. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.[1]

See text, § 154.

Illinois and Nebraska omit this section.

1—This section construed: Elliott v. Worcester Trust Co., 189 Mass. 542, 75 N. E. 944; Price v. Galliff's Ex'rs (Ky. 1908), 110 S. W. 332.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: First Nat. Bank v. Hall, 119 Ala. 64, 24 So. 526; Bedford Bank v. Acoarn, 125 Ind. 582, 25 N. E. 713, 9 L. R. A. 560; Ridgley Nat. Bank v. Patton, 109 Ill. 479; Home National Bank v. Newton, 8 Bradwell (Ill.), 563, *contra;* Lazier v. Horan, 55 Ia. 75; Gresson v. Commercial Bank, 87 Tenn. 350; Indig v. Nat. City Bank, 80 N. Y. 106, 3 L. R. A. 273; Aetna Nat. Bank v. Fourth Nat. Bank, 132 Mass. 151; Mechanics & Traders' Bank v. Seitz, 150 Pa. St. 632; Commercial Bank v. Hughes, 17 Wend. 94; National Exchange Bank v. National Bank, 132 Mass. 151; German National Bank v. Florence, 138 Pa. St. 474, 479; State Bank v. McCabe (Mich.), 98 N. W. 20; Alpen Nat. Bank v. Greenbaum, 74 Mich. 157; Commercial Nat. Bank v. Henninger, 105 Pa. St. 496; Dawson v. Real Estate Bank, 5 Pike 284.

§ 148 (88). What constitutes payment in due course. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.[1]

See text, § 182.

Cross sections: 2 (191), 94 (55), 95 (56), 200 (119).

1—Construing corresponding provisions of English Bills of Exchange Act: 59 (1), last paragraph.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Payment before the day: Watson v. Wyman, 161 Mass. 96, 99; Wheeler v. Guild, 20 Pick. 545; Williams v. Keyes, 90 Mich. 290.

Payment to the holder: Trustees of the I. I. Funds v. Lewis, 34 Fla. 424, 428; Dutton v. Ives, 5 Mich. 515; Bloomen v. Dan, 122 Mich. 522; Texarkana Nat. Bank v. Stillwell & Co., 121 Mich. 154; Page Woven Wire Fence Co. v. Pool, 133 Mich. 323; Home Savings Bank v. Stewart (Neb.), 110 N. W. Rep. 947; Wheeler v. Guild, 20 Pick. 545, 553; Adair v. Lenox, 15 Oregon 489; Swengle v. Wells, 7 Ore. 222; Gosling v. Griffin, 85 Tenn. 737; Davis v. Miller, 14 Gratt. 1; Marling v. Nommensen, 127 Wis, 363; Loizeaux v. Frender, 123 Wis. 193, 198.

ARTICLE VIII.

NOTICE OF DISHONOR.

§ 160 (89). To whom notice of dishonor must be given.
161 (90). By whom given.
162 (91). Notice given by agent.
163 (92). Effect of notice given on behalf of holder.
164 (93). Effect where notice is given by party entitled thereto.
165 (94). When agent may give notice.
166 (95). When notice sufficient.
167 (96). Form of notice.
168 (97). To whom notice may be given.
169 (98). Notice where party is dead.
170 (99). Notice to partners.
171 (100). Notice to persons jointly liable.
172 (101). Notice to bankrupt.
173 (102). Time within which notice must be given.
174 (103). Where parties reside in same place.
175 (104). Where parties reside in different places.
§176 (105). When sender deemed to have given due notice.
177 (106). Deposit in post-office, what constitutes.
178 (107). Notice to subsequent parties, time of.
179 (108). Where notice must be sent.
180 (109). Waiver of notice.
181 (110). Whom affected by waiver.
182 (111). Waiver of protest.
183 (112). When notice dispensed with.
184 (113). Delay in giving notice; how excused.
185 (114). When notice need not be given to drawer.
186 (115). When notice need not be given to indorser.
187 (116). Notice of non-payment where acceptance refused.
188 (117). Effect of omission to give notice of non-acceptance.
189 (118). When protest need not be made; when must be made.

Sections 160 to 189 above are the sections of the New York Law.

Sections 89 to 118 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 89 to 118 in the following States and Territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia, Wyoming.

They are found as the following sections in the following States and Territories: As sections 3392 to 3421 in the R. S. of Arizona; as 88 to 117 in Illinois; as 96 to 125 in Kansas and Oregon; as 108 to 137 in Maryland; 91 to 120 in Michigan; 88 to 117 in Nebraska; 3174 to

3175 in Ohio; 97 to 126 in Rhode Island; 1678-19 to 1678-48 in Wisconsin.

§ 160 (89). To whom notice of dishonor must be given. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.[1]

See text, § 168.

Cross sections: 168 (97), 179 (108), 130 (70), 116 (66), 136 (76), 167 (96), 143 (83), 144 (84), 114 64-1), 180 (109), 201 (120-6), 180 (109), 187 (116), 246 (149), 248 (151), 130 (70).

1—This section construed: Baumeister v. Kuntz (Fla.), 42 So. 886; Rockfield v. First National Bank, 8 Ohio C. C. (N. S.) 290; Deaby v. Choquet, 28 R. I. 338, 67 Atl. 421; American Exch. Bank v. Am. Hotel Victoria Co., 103 App. Div. 372, 92 N. Y. S. 1006; Fonseca v. Hartman, 84 N. Y. S. 131; Ebling Brewing Co. v. Reinkeimer, 32 Misc. R. 594, 66 N. Y. S. 458; Gailbraith v. Shepard, 43 Wash. 698, 86 Pac. 1113.

Notice of dishonor to drawer: Ewald v. Faulhaber Co., 105 N. Y. S. 114; Scanlan's Wallack, 53 Misc. R. 104, 102 N. Y. S. 1090.

Notice of dishonor to indorser: Hopkins v. Merrill, 79 Conn. 626, 66 Atl. 174; Peck v. Easton, 74 Conn. 456, 51 Atl. 134; Wisdom v. Levy (La.), 45 So. 554; Reed v. Spear, 107 App. Div. 144, 94 N. Y. S. 1007.

Joint maker: Rouse v. Wooten, 140 N. C. 557, 53 S. E. 430.

One indorsing a note in blank before delivery and who is held to be an indorser and was not given notice of non-payment and dishonor, was discharged: J. W. Perry Co. v. Taylor Bros. (N. C. 1908), 62 S. E. 423.

A complaint which states that the note was duly presented for payment at the time and place designated thereon and payment thereof demanded and refused, and that said note was duly protested, and that due notice of the protest was duly given the defendants and each of them is sufficient as against a demurrer by an indorser, notwithstanding Neg. Inst. Law, Laws 1897, p. 739, c. 612, § 160: Sherman v. Ecker, 110 N. Y. S. 265.

A drawer of a check on a bank in which he had sufficient funds is discharged from liability on the failure of the person receiving the check to give notice of its dishonor on the bank refusing to pay because it was short of funds: Bacigalupe v. Parrilli (N. Y. 1908), 112 N. Y. S. 1040.

Due presentment and notice of dishonor are necessary to charge the indorser: J. W. O'Bannon Co. v. Curran, 113 N. Y. S. 359.

One accepting a check from the drawer and depositing it for collection takes it subject to the general rules affecting Negotiable Instruments: Cassel v. Regierer, 114 N. Y. S. 601.

Construing corresponding provision of English Bills of Exchange Act: Section 48.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Breed v. Hillhouse, 7 Conn. 523; Marks v. Boone, 24 Fla. 177; Citizens' Bank v. First Nat. Bank of Iowa, 113 N. W. 481; Roberts v. Hawkins, 70 Mich. 566; Brown v. Curtiss, 2 N. Y. 225; Allen v. Rightmere, 20 Johns. 365; Union Bank v. Magruder, 7 Peters 287; Bank v. McVeigh, 29 Gratt. 546; Juniata Bank v. Hale, 16 S. & R. 157; Jones v. Savage, 6 Wend. 659; Woodcock v. Bennet, 1 Cow. 711; Robert v. Hawkins, 70 Mich. 566; Hugerford v. O'Brien, 37 Minn. 306; Wood v. Callaghan, 61 Mich. 402; West River Bank v. Taylor, 34 N. Y. 128; Linn v. Horton, 1 Wis. 157.

§ 161 (90). By whom given. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.[1]

See text, § 167.

Cross sections: 116 (66), 180 (109); 200 (119-5), 162 (91).

1—This section construed: First National Bank v. Gridley, 112 App. Div. 398, 98 N. Y. S. 445; Traders' National Bank v. Jones, 104 App. Div. 433, 93 N. Y. S. 768.

Construing corresponding provisions of English Bills of Exchange Act: Section 49 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Brailsford v. Williams, 15 Md. 151; Stanton v. Blossom, 14 Mass. 116; Lawrence v. Miller, 16 N. Y. 235, 237; Chanvine v. Fowler, 3 Wend. 173; Austen v. Miller, Fed. Cas. No. 661; Bank of Utica v. Smith, 18 Johns. 230; Cromer v. Platt, 37 Mich. 132.

§ 162 (91). Notice given by agent. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.[1]

See text, § 167.

Cross sections: 116 (66), 180 (19), 200 (119-5).

1—This section construed: First National Bank v. Gridley, 112 App. Div. 398, 98 N. Y. S. 445; Traders' Nat. Bank v. Jones, 104 App. Div. 433, 93 N. Y. S. 768.

Construing corresponding provision of English Bills of Exchange Act: Section 49 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Notice given by agent in his own name: Drexler v. McGlynn, 99 Cal. 143, 33 Pac. 773; Rennick v. Robbins, 28 Mo. 339; Cabot Bank v. Warner, 92 Mass. 522.

In the name of party entitled to give notice: Colt v. Noble, 5 Mass. 167; West River Bank v. Taylor, 34 N. Y. 128, 130; Lawrence v. Miller, 16 N. Y. 235, 238.

Notary in giving notice acts not as a public officer but as the agent of the party he serves: Bank v. Ober, 31 Kan. 599, 3 Pac. 324.

When signature insufficient: Cabot Bank v. Warner, 10 Allen 522.

Bank which holds note for collection is deemed holder for purpose of giving notice: Burnham v. Webster, 19 Me. 232; Croche v. Getchell, 23 Me. 392; Blackesle v. Hewett, 76 Wis. 34, 44 N. W. 1105; Winchester Bank v. Fellows, 28 N. H. 302; Worden v. Nourse, 36 Vt. 756.

It has been held that an acceptor or any party to the bill may give valid notice independent of any question of agency: Douglass v. Bank, 97 Tenn. 133. But see, New York Co. v. Selina Sav. Bank, 51 Ala. 305.

§ 163 (92). Effect of notice on behalf of holder. Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.[1]

See text, § 174.

Cross sections: 162 (91).

1—This section construed: Traders' Nat. Bank v. Jones, 104 App. Div. 433, 93 N. Y. S. 768.

Construing corresponding provision of English Bills of Exchange Act: Sec. 49 (3).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: West River Bank v. Taylor, 34 N. Y. 128, 131; Stafford v. Yates, 18 Johns. 327; Lynn v. Horton, 17 Wis. 150, 153.

§ 164 (93). Effect where notice is given by party entitled thereto. Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.[1]

See text, § 174.

1—Construing corresponding provisions of English Bills of Exchange Act: Sec. 49 (4).

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Stefford v. Yates, 18 Johns. 327.

§ 165 (94). When agent may give notice. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and

the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.[1]

See text, § 167.

1—Construing corresponding provision of English Bills of Exchange Act: Sec. 49 (13); Fieldings v. Carry (1898), 1 Q. B. 268.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Rosson v. Carroll, 90 Tenn. 90; Ohio Life Ins. Co. v. McCogue, 18 Ohio 54; Farmers' Bank v. Vail, 21 N. Y. 485; Fifth v. Thrush, 8 B. & C. 387.

§ 166 (95). When notice sufficient. A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication.[1, 1a] A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.[1, 2a]

See text, § 166.

The Kentucky act substitutes "written" for "verbal."

1—This section construed: Second Nat. Bank v. Smith, 118 Wis. 18, 94 N. W. 664.

Construing corresponding provision of English Bills of Exchange Act: Sec. 49 (7).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Written notice not signed: Kilgore v. Bulkley, 14 Conn. 362; Spann v. Baltzell, 1 Fla. 301; Tobey v. Lenning, 14 Pa. St. 483; Bank v. Dibrell, 91 Tenn. 301; Klockenbam v. Pierson, 16 Col. 375; Walmsley v. Acton, 44 Barb. 312; Walker v. State Bank, 8 Mo. 705.

2a—Misdescription of instrument: Snow v. Perkins, 2 Mich. 238; Alexandria v. Suam, 9 Pet. 33; Cayuga County Bank v. Worden, 6 N. Y. 19; Marshall v. Sonneman, 216 Pa. St. 65; Aiken v. Marine Bank, 16 Wis. 679; Dodson v. Taylor, 56 N. J. L. 19; Mills v. Bank, 11 Wheat. 431.

§ 167 (96). Form of notice. The notice may be in writing or merely oral, and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment.[1, 1a] It may in all cases be given by delivering it personally or through the mails.[1, 2a]

See text, § 165.

Cross sections: 177 (106), 179 (108), 136 (76), 160 (89), 168 (97).

1—This section construed: Reed v. Spear, 107 App. Div. 144, 94 N. Y. S. 1007; American Exch. Nat. Bank v. Am. Hotel Victoria Co., 103

App. Div. 372, 92 N. Y. S. 1006; Second Nat. Bank v. Smith, 118 Wis. 18, 94 N. W. 664.

A notice containing a copy of the note, and declaring that payment has been demanded and refused is sufficient: Zoller v. Moffitt (Pa. 1909), 72 Atl. 285.

Construing corresponding provision of English Bills of Exchange Act: Secs. 49 (5), 49 (15).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Notice may be given in writing or orally: Gill v. Palmer, 29 Conn. 57; Cowles v. Horton, 3 Conn. 523; Bank v. McVeigh, 29 Gratt. 558; Sasscer v. Farmers' Bank, 4 Md. 409; Hunter v. Van Bomhorst, 1 Md. 504, 510; Bank of U. S. v. Carneal, 2 Peters 543; Mills v. Bank of U. S., 11 Wheat 431; Bank of Alexandria v. Swain, 9 Peters 33; Cuyler v. Stevens, 4 Wend. 566; Dodson v. Taylor, 56 N. J. Law 11; Sussex Bank v. Baldwin, 2 Harr. (N. J.) 487; Howland v. Adrian, 29 N. J. Law. 48; Bank of Cooperstown v. Woods, 28 N. Y. 545; Artisan's Bank v. Backus, 36 N. Y. 106; Hodges v. Schuler, 22 N. Y. 114; Cook v. Litchfield, 9 N. Y. 279, 281; Young v. Lee, 12 N. Y. 551; Cayuga County Bank v. Worden, 1 N. Y. 413, 417, 6 N. Y. 19; Home Insurance Co. v. Greene, 19 N. Y. 518; Cromer v. Platt, 37 Mich. 132.

As to sufficiency of notice see: Platt v. Drake, Doug. 296; Burkman v. Trowbridge, 9 Mich. 209; Spies v. Newberry, 2 Doug. 424; Etting v. Schuylkill Bank, 2 Pa. St. 355; Brewster v. Arnold, 1 Wis. 264; Durham v. Donahue, 155 Fed. Rep. 385; Nelson v. First Nat. Bank, 29 U. S. App. 554, 69 Fed. Rep. 798, 16 C. C. A. 425.

2a—Delivered through the mails: Newberry v. Trowbridge, 4 Mich. 390; Nevins v. Bank, 10 Mich. 547; Cabot Bank v. Warner, 11 Allen 522; Ins. Co. v. Wilson, 29 W. Va. 547; Bell v. Hagerstown Bank, 7 Gill. 216; Boyd's Admr. v. City Savings Bank, 15 Gratt. 501, 505; Sheldon v. Benham, 4 Hill, 129; Lindenberger v. Beall, 6 Wheat. 104; Shelboune Falls Nat. Bank v. Townsley, 102 Mass. 177; Walters v. Brown, 15 Md. 292; Shoemaker v. Mechanics' Bank, 59 Pa. St. 83; Eagles' Bank v. Hathaway, 5 Met. (Mass.) 213; Brown v. Bank of Abingdon, 85 Va. 95; Westfall v. Farwell, 13 Wis. 504, 509; Smith v. Hill, 6 Wis. 154; Bank of Columbia v. Lawrence, 1 Peters 578.

§ 168 (97). To whom notice may be given. Notice of dishonor may be given either to the party himself or to his agent in that behalf.[1]

See text, § 168.

Cross sections: 136 (76), 160 (89), 167 (96), 179 (108).

1—This section construed: Reed v. Spear, 107 App. Div. 144, 94 N. Y. S. 1007; Am. Exch. Nat. Bank v. Am. Hotel Victoria Co., 103 App. Div. 372, 92 N. Y. S. 1006; Mohlman Co. v. McKane, 60 App. Div. 546, 69 N. Y. S. 1046; Marshall v. Sonneman, 216 Pa. 65, 64 Atl. 874.

Construing corresponding provisions of English Bills of Exchange Act: Sec. 49 (80).

The following cases either do not cite the Negotiable Instruments

Law or were decided previous to the enactment of it: Fassen v. Hubbard, 55 N. Y. 465; Persons v. Kruger, 45 App. Div. 187; Lake Shore National Bank v. Butler Colliery Co., 51 Hun 63, 68; Paine v. Edsell, 19 Pa. St. 178; Volk v. Gaillard, 4 Strob. 99.

Attorney or solicitor must be especially empowered to receive notice: La. State Bank v. Ellery, 4 Mont. (N. S.) 87.

§ 169 (98). Notice where party is dead. When any party is dead,[1] and his death is known to the party giving notice, the notice must be given to a personal representative,[1a] if there be one, and if with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.[2a]

See text, § 168.

1—This section construed: Merchants' Bank v. Brown, 86 App. Div. 599, 83 N. Y. S. 1037.

Construing corresponding provisions of English Bills of Exchange Act: 49 (9).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Notice given to personal representative of deceased: Maspero v. Pedesclaux, 22 La. Ann. 227; Goodnow v. Warren, 122 Mass. 82; Massachusetts Bank v. Oliver, 10 Cush. 557; Boyd's Administrator v. City Savings Bank, 15 Gratt. 501; Dodson v. Taylor, 56 N. J. Law 11; Smaller v. Wright, 40 N. J. Law 471; Bank v. Darling, 91 Hun 236; Denninges v. Miller, 7 App. Div. (N. Y.) 409; Merchants' Bank v. Birch, 17 Johns. 24; Bealls v. Peck, 12 Barb. 245; Cayuga Co. Bank v. Bennett, 5 Hill 236; Bank of Port Jefferson v. Darling, 91 Hun 236; Shoenberger's Executor v. Lancaster Savings Institution, 28 Pa. St. 459; Drexler v. McGlyn, 99 Col. 143; Mathewson v. Strafford Bank, 45 N. H. 104; Smalley v. Wright, 40 N. J. L. 471.

2a—If no personal representative: Goodnow v. Warren, 122 Mass. 82; Stewart v. Eden, 2 Caines (N. Y.) 121; Massachusetts Bank v. Oliver, 10 Cush. 557; Merchants' Bank v. Birch, 17 Johns. 25; Lindeman's Exr. v. Guilden, 34 Pa. St. 54.

§ 170 (99). Notice to partners. Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.[1]

See text, § 168.

Cross sections: 162 (91).

1—This section construed: Traders' Nat. Bank v. Jones, 104 App. Div. 433, 93 N. Y. S. 768.

The notarial certificates to control which no evidence was offered, furnished sufficient proof of the maker's failure to pay the note at maturity and of the notice of dishonor to the company, even if the partnership had been dissolved and the defendant not informed by

his former partner of the protest: Fergenspan v. McDonald (Mass., March, 1909), 87 N. E. 624.

Construing corresponding provisions of English Bills of Exchange Act: 49 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Notice to one of partners: Foland v. Boyd, 23 Pa. St. 476.

In case of dissolution: Coster v. Thomason, 19 Ala. 717; Slocomb v. Lizardi, 21 La. Ann. 355; Seldner v. Mount Jackson Nat. Bank, 66 Md. 488; Fourth National Bank v. Henschuh, 52 Mo. 207; Fourth Nat. Bank v. Allheimer, 91 Mo. 190; Brown v. Tuner, 15 Ala 832; Hubbard v. Matthews, 54 N. Y. 43, 50.

§ 171 (100). Notice to persons jointly liable. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.[1]

See text, § 168.

1—Construing corresponding provision of English Bills of Exchange Act: 49 (11).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Shepard v. Hawley, 1 Conn. 365; Boyd v. Orton, 16 Wis. 495; People's Bank v. Reech, 26 Md. 521; Miser v. Trovinger's Ex., 7 Ohio St. 281.

As to distinction between joint parties who are not parties and joint parties who are partners, see: Gates v. Bucker, 60 N. Y. 523; Jarragin v. Stratton, 95 Tenn. 621.

§ 172 (101). Notice to bankrupt. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.[1]

See text, § 168.

1—Construing corresponding provision of English Bills of Exchange Act: 49 (10).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Callahan v. Kentucky Bank, 82 Ky. 231; American Nat. Bank v. Junk Bros., 94 Tenn. 634. *Contra*, House v. Vinton, 43 Ohio St. R. 346.

§ 173 (102). Time within which notice must be given. Notice may be given as soon as the instrument is dishonored and unless delay is excused as hereinafter provided, must be given within the times fixed by this act.[1]

See text, § 169.

Cross sections: 135 (75).

1—This section construed: German-American Bank v. Millinan, 31 Misc. R. 87, 65 N. Y. S. 242.

Construing corresponding provision of English Bills of Exchange Act: 49 (12) Fielding v. Carry (1898), 1 Q. B. 268.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Bank of Alexandria v. Swan, 9 Peters 33; Whitwell v. Bringham, 19 Pick. 117; Lenox v. Roberts, 2 Wheat. 373; Coleman v. Carpenter, 9 Pa. St. 178.

§ 174 (103). Where parties reside in same place. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;[1a]

2. If given at his residence, it must be given before the usual hours of rest on the day following;[2a]

3. If sent by mail,[1] it must be deposited in the post-office in time to reach him in usual course on the day following.

See text, § 169.

1—This section construed: Cassel v. Reglerer, 114 N. Y. S. 601.
Sent by mail: Siegel v. Bubinsky, 107 N. Y. S. 678.

Construing corresponding provision of English Bills of Exchange Act: 49 (12) (a).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Notice at place of business: Marks v. Boon, 24 Fla., 177; Rowe v. Trippen, C. B., 249; Lockwood v. Crawford, 18 Conn. 361; Baker v. Webster, 10 La. 593; Bill v. Hagerstown Bank, 7 Gill. 216; Cayuga County Bank v. Hunt, 2 Hill 236; Rossin v. Carroll, 90 Tenn. 90; Adams v. Wright, 14 Wis. 408.

2a—At his residence: Darbishire v. Parker, 6 East 8; Phelps v. Stocking, 21 Neb. 444; Adam v. Wright, 14 Wis. 408.

As to due diligence, see: Farmsworth v. Mullen, 164 Mass. 112; Bank of Utica v. Bender, 21 Wend. 643; Deblieux v. Bullard, Rob. (La.) 66.

§ 175 (104). Where parties reside in different places. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:[1]

1. If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if

there be no mail at a convenient hour on that day, by the next mail thereafter.[1a]

2. If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it has been deposited in the post-office within the time specified in the last subdivision.[2a]

See text, § 169.

Cross section: 179 (108).

1—This section construed: Jurgens v. Wichman, 108 N. Y. S. 881; Mohlman Co. v. McKane, 60 App. Div. 546, 69 N. Y. S. 1046; First Nat. Bank of Shawano v. Miller (Wis. 1909), 120 N. W. 820.

Construing corresponding provisions of English Bills of Exchange Act: 49 (12) (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Given by mail: Sanderson v. Sanderson, 20 Fla. 292; Lawson v. Farmers' Bank, 1 Ohio St. 206; Westfield Wheeled Scraper Co., 50 Neb. 105; Carbin v. Planters Nat. Bank, 87 Va. 666; Brown v. Jones, 125 Ind. 375; Stimback v. Bank, 11 Gratt 260; Friend v. Wilkinson, 9 Gratt 31; Whitwell v. Johnson, 17 Mass. 449; Smith v. Poillion, 87 N. Y. 590, 597; Stephenson v. Deckman, 24 Pa. St. 148; Burgess v. Vreeland, 4 Zat. (N. J.) 71; Winans v. Davis, 3 Harr. (N. J.) 276; Fleming v. McClure, 1 Brevard (S. C.) 428.

2a—Otherwise than through post-office: Jarvis v. St. Crois Mfg. Co., 23 Me. 287; Bank of Columbia v. Lawrence, 1 Peters 578; Corbin v. Planter's Bank, 87 Va. 666.

§ 176 (105). When sender deemed to have given due notice. Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.[1]

See text, § 171.

1—This section construed: State Bank v. Solomon, 84 N. Y. S. 976.

Under this section due notice of dishonor is deemed to have been given when it is shown that the notice is properly addressed and deposited in the post-office whether it is received or not: Tollner v. Moffitt, Pa. 1909, 72 Atl. 285.

Construing corresponding provision of English Bills Act: 49 (15).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Windham Bank v. Morton, 22 Conn. 213; Sasscer v. Farmers' Bank, 4 Md. 409; Bell v. Hagerstown Bank, 7 Gill 216; Shed v. Brett, 1 Pick. 401, 410; Pier v. Heinrichsoffen, 67 Me. 163; Cook v. Foraker, 193 Pa. St. 461; Shelburns' Bank v. Grummell, Adm. 26 Gratt. 137; Morley v. Lyon, 117 Ill. 244; Pheps v. Sticking, 21 Neb. 443.

§ 177 (106). Deposit in post-office; what constitutes. Notice is deemed to have been deposited in the post-office when de-

posited in any branch post-office or in any letter box under the control of the post-office department.[1]

See text, § 171.

1—The following cases either did not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Nat. Bank v. Shaw, 79 Me. 376; Johnson v. Brown, 154 Mass. 105; Wood v. Collegham, 61 Mich. 402; Casco Nat. Bank v. Shaw, 79 Me. 376; Pearce v. Langfit, 101 Pa. St. 507; Shoemaker v. Mechanics' Bank, 59 Pa. St. 79.

§ 178 (107). Notice to subsequent party; time of. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.[1]

See text, § 169.

1—This section construed: Jurgens v. Winchman, 108 N. Y. S. 881.

Construing corresponding provisions of English Bills of Exchange Act: 49 (14).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Seaton v. Scovill, 18 Kans. 435; Shelburne Falls National Bank v. Townsley, 102 Mass. 177; Colt v. Noble, 5 Mass. 167; Mead v. Engs, 5 Cow. 303; Howard v. Ives, 1 Hill 263; Howland v. Adrian, 29 N. J. Law. 41; Fuller Buggy Co. v. Waldron, 112 App. Div. (N. Y.) 814; Struthers v. Blake, 30 Pa. St. 139; Haly v. Brown, 5 Pa. St. 178; Etting v. Schuylkill Bank, 2 Pa. St. 355; Corbin v. Planter's Nat. Bank, 87 Va. 666; Sinn v. Horton, 17 Wis. 150.

§ 179 (108). Where notice must be sent. Where a party has added an address to his signature, notice of dishonor must be sent to that address;[1a] but if he has not given such address, then the notice must be sent as follows:[1]

1. Either to the post-office nearest to his place of residence or to the post-office where he is accustomed to receive his letters;[2a] or

2. If he live in one place, and have his place of business in another, notice may be sent to either place;[3a] or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.[4a]

But where the notice is actually received by the party within the time specified in this act, it will be sufficient though not sent in accordance with the requirements of this section.[5a]

See text, § 170.

Cross section: 175 (104).

1—This section construed: Albany Trust Co. v. Frothingham, 50 Misc. R. 598, 99 N. Y. S. 343.

Insufficient notice: Fonsera v. McKane, 60 App. Div. 546, 69 N. Y. S. 1046.

Notice addressed to post-office: Ebling Brewing Co. v. Reinheimer, 32 N. Y. Misc. R. 594, 66 N. Y. S. 458.

A notary made inquiries of several persons as to the post-office address of an indorser, all of whom appeared to possess some information on the subject and expressed the belief that a certain town was the proper address of the indorser, and that town was the closest town to the indorser's farm, and a much larger town than the town at which the indorser received his mail, and the notary acted in good faith; a notice of dishonor sent to such town was sufficient, though because the indorser did not receive his mail there, but in such other town, it was not received within a reasonable time. Vogel v. Starr, Mo. App. 1908, 112 S. W. 27.

Construing corresponding provisions of English Bills of Exchange Act:

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Notice sent to the address added to signature by party: Bartlett v. Robinson, 39 N. Y. 187; Peters v. Hobbs, 25 Ark. 67; Easlen Bank v. Brown, 17 Me. 356.

2a—Notice sent to post-office: Northwestern Coal Co. v. Bowman, 69 Iowa 150; Moore v. Hardcastle, 11 Md. 486; Shelburne Falls Nat. Bank v. Townsley, 107 Mass. 444; Rand v. Reynolds, 2 Gratt. 171; Bank of Columbia v. Lawrence, 1 Peters 578; National Bank v. Cade, 73 Mich. 449; Mercer v. Lancaster, 5 Pa. St. 160; Woods v. Neeld, 44 Pa. St. 86.

3a—Sent either to residence or place of business: Montgomery County Bank v. Marsh, 7 N. Y. 481; Sims v. Larkin, 19 Wis. 390; Bank of U. S. v. Carneal, 2 Peters 549; Willison v. Bank of U. S., 2 Peters 96.

4a—Sent to place where he is sojourning: Lowell Trust Company v. Pratt, 183 Mass. 379, 381; Walker v. Stitson, 14 Ohio St. 89; Bigley's Adm'r v. Cliff, 16 Gratt. 284, 291-292; Young v. Durgin, 15 Gray 264; Chouteau v. Webster, 6 Metc. 1; Bank of Commerce v. Chambers, 14 Mo. App. 152.

Sojourning, meaning of term: Wittenbrock v. Mabins, 10 N. Y. S. 733, 57 Hun. 146; Henry v. Ball, 14 U. S. (1 Wheat.) 1.

5a—Notice actually received: Whifford v. Burckmeyer, 1 Gill. 127; Dickens v. Hall, 87 Pa. St. 379, 380; Terbell v. Jones, 15 Wis. 235.

Notice sent to place where indorser will be most likely to receive it: Am. Nat. Bank v. Junk Bros., 94 Tenn. 624; Bank of America v. Shaw, 142 Mass. 290; Casco Bank v. Shaw, 79 Me. 376.

§ 180 (109). Waiver of notice. Notice of dishonor may be waived either before the time of giving notice has arrived[1a]; or after the omission to give due notice,[2a] and the waiver may be express or implied.[1, 3a]

See text, § 172.

Cross sections: 142 (82-3), 114 (64-1), 116 (66), 200 (119-5), 130 (70).

1—This section construed: Forbert v. Montague (Colo.), 87 Pac. 1145; Banmeister v. Kuntz (Fla.), 42 So. 886; First National Bank v. Gridley, 112 App. Div. 398, 98 N. Y. S. 445; Galbraith v. Shepard, 43 Wash. 698, 86 Pac. 1113; Weil v. Corn Exchange Bank, 116 N. Y. S. 665.

The defendant, knowing that the maker could not pay the notes when due, because its property was in the hands of a receiver in bankruptcy, in which he participated, impliedly waived presentment of the notes and notice of dishonor: J. W. O'Bannon Co. v. Curran, 113 N. Y. S. 359.

Construing corresponding provisions of English Bills of Exchange Act: 50 (2) (b); In re Fenwick (1902), 1 Ch. 507.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—When notice may be waived: Robinson v. Barnett, 19 Fla. 670; Whittaker v. Morrison, 1 Fla. 25; Star Wagon Co. v. Swezey, 52 La. 391; Glace v. Ferguson, 48 Kan. 157; Gove v. Vining, 7 Met. (Mass.) 212; Toole v. Crafts, 193 Mass. 110; Parks v. Smith, 155 Mass. 26, 33; Thornton v. Wynn, 12 Wheat, 183; Lou v. Howard, 10 Cush. 159, S. C. 11 Cush. 268; Garland v. Salem Bank, 9 Mass. 408; Kelley v. Brown, 5 Gray 108; Turnbull v. Maddux, 68 Md. 579; Seldner v. Mount Jackson Nat. Bank, 66 Md. 488; Lewis v. Brehme, 33 Md. 412; Tailer v. Murphy Furnishing Co., 24 Mo. App. 420; First Nat. Bank v. Gridley, 112 App. Div. (N. Y.) 398; Ross v. Hurd, 71 N. Y. 14, 18; Hunter v. Hook, 64 Barb. 469; Gantry v. Doane, 48 Barb. 148; Boyd v. Bank, 32 Ohio St. 526; Smith v. Downsdale, 6 Oregon 78; Bank v. Dibbrell, 91 Tenn, 301; Glarer v. Rounds, 16 R. I. 235; Aebi v. Bank of Evansville, 124 Wis. 73, 81; Schierl v. Baunel, 75 Wis. 75; Hole v. Danforth, 46 Wis. 554; Ligerson v. Mathews, 20 How. (U. S.) 496.

2a—Notice of dishonor may be waived after failure to give due notice: State Bank v. McCabe (Mich. 1904), 98 N. W. 20; Parsons v. Dickson, 23 Mich. 56; Rundge v. Kimball, 124 Mass. 209; Parks v. Smith, 155 Mass. 26; Ross v. Hurd, 71 N. Y. 14; Oxnard v. Varnum, 111 Pa. St. 193.

3a—Waiver may be expressed or implied: Lockwood v. Crawford, 18 Conn. 374; Whittaker v. Morrison, 1 Fla. 25; Mechanics' Bank v. Griswold, 7 Wend. 165; Haskell v. Boardman, 8 Allen 38; Moore v. Alexander, 63 App. Div. 100; Smith v. Lownsdale, 6 Ore. 78; Jenkins v. White, 147 Pa. St. 303; Annville National Bank v. Kettering, 106 Pa. St. 531, 534; Valley Nat. Bank v. Uhles, 191 Pa. St. 356; Jones v. Roberts, 191 Pa. St. 152.

If the time of giving notice has not expired an oral waiver may be revoked: Second Nat. Bank v. McGuire, 33 Ohio St. 295, 31 Am. Rep. 539.

No particular form for waiver: Juantance v. Goodrow, 16 Mont. 376, 41 Pac. 76.

§ 181 (110). Whom affected by waiver. Where the waiver is embodied in the instrument itself, it is binding upon all parties;[1a] but where it is written above the signature of an indorser, it binds him only.[2a]

See text, § 179.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Waiver in the instrument itself: Woodward v. Lowry, 74 Ga. 148; Farmers' Bank of Kentucky v. Ewing, 78 Ky. 264; Lowry v. Steele, 27 Ind. 168; Phillips v. Dippe, 93 Iowa 35; Bryant v. Merchants' Bank, 8 Bush 43; Bryant v. Taylor, 19 Minn. 596; Jacobs v. Gibson, 77 Mo. App. 244; Smith v. Peckham, 8 Texas Civ. App. 326.

2a—Written above signature of indorser: Farmers' Bank v. Ewing, 78 Ky. 264; Woodman v. Thurston, 8 Cush. 157.

It has been held that when a waiver is written above the signature of the indorser it dispenses with notice to subsequent indorsers: Parshley v. Health, 69 Me. 90; Johnson v. Parker, 86 Mo. App. 660; Farmers' Exchange Bank v. Altura & Co., 129 Col. 263.

The statute settles the rule.

§ 182 (111). Waiver of protest. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.[1]

See text, § 179.

1—This section construed:

Waiver of presentment for payment and notice of protest: First Nat. Bank of Pomeroy, Ia. v. Buttery (N. D. 1908), 116 N. W. 341.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: First Nat. Bank v. Falkenham, 94 Cal. 141; Continent Life Ins. Co. v. Barber, 50 Conn. 567; Johns v. Parsons, 140 Mass. 173; Cook v. Warren, 88 N. Y. 37; Coddington v. Davis, 1 N. Y. 186, 189-190; Sprague v. Fletcher, 8 Oregon 367; First Nat. Bank v. Schreiner, 110 Pa. St. 188; Annville Nat. Bank v. Kettering, 106 Pa. St. 531; First Nat. Bank v. Hartman, 110 Pa. St. 196; Wilkie v. Chandon, 1 Wash. 355; Brewster v. Arnold, 1 Wis. 264; Union Bank v. Hyde, 6 Wheat. 572.

Waiver—How construed: Voorhies v. Allee, 29 Ia. 49; Drinkwater v. Tebbetts, 17 Me. 16; Backus v. Shepherd, 11 Wend. 629; Sprague v. Fletcher, 8 Ore. 367.

§ 183 (112). When notice is dispensed with. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.[1]

See text, § 172.

Cross sections: 179 (108), 51 (25).

1—This section construed: Fonseca v. Hartman, 84 N. Y. S. 131; Brewster v. Schrader, 26 Misc. R. 480, 57 N. Y. S. 606; Reed v. Spear, 107 App. Div. (N. Y.) 144; Mohlman Co. v. McKane, 60 App. Div. 546.

Construing corresponding provision of English Bills of Exchange Act: 50 (2) (a).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Bartlett v. Isbell, 31 Conn. 297; Hartford Bank v. Stedman's, 3 Conn. 494; Hill v. Farrell, 3 Greenleaf 233; Staylor v. Ball, 24 Md. 183; Tate v. Sullivan, 30 Md. 464; Hobbs v. Straine, 149 Mass. 212; Howland v. Adrian, 25 N. J. Law. 41; Fonseca v. Hartman, 84 N. Y. S. 131; Brewster v. Schrader, 26 Misc. 480, 57 N. Y. S. 606; Bacon v. Hanna, 137 N. Y. 379, 382; Siegel v. Dubinsky, 56 Misc. (N. Y.) 681; Bank of Port Jefferson v. Darling, 91 Hun 236; Lawrence v. Miller, 16 N. Y. 231; Baer v. Leppert, 12 Hun 516; Greenwich Bank v. DeGroot, 7 Hun 210; Bacon v. Hanna, 137 N. Y. 379; University Press v. Williams, 48 App. Div. (N. Y.) 190; Haly v. Brown, 5 Pa. St. 178, 182; Lambert Ghiselin, 9 How. (U. S.) 552.

§ 184 (113). Delay in giving notice; how excused. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.[1]

See text, § 173.

1—Construing corresponding provisions of English Bills of Exchange Act: 50 (1); Studdy v. Beesty, 60 L. T. Rep. 647; Keith v. Burke, 1 Cababe' Ellis 551; The Elmville (1904), P. 319.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Martin v. Ingersoll, 8 Pick. 1.

Delay caused by war: James v. Wade, 21 La. Ann. 548; Norris v. Despard, 38 Md. 487.

§ 185 (114). When notice need not be given to drawer. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;[1a]
2. Where the drawee is a fictitious person or a person not having capacity to contract;[2a]
3. Where the drawer is the person to whom the instrument is presented for payment;[3a]
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;[4a]
5. Where the drawer has countermanded payment.[1]

See text, § 172.

Cross section: 160 (89).

1—This section construed: Drawer has countermanded payment: Scanlon v. Wallach, 53 Misc. R. 104, 102 N. Y. S. 1090.

The drawer must be given notice or it must be shown that the drawer was not entitled to notice under Sec. 185 Neg. Inst. Law: Cassel v. Rezierer, 114 N. Y. S. 601.

Construing corresponding provisions of English Bills of Exchange Act: 50 (2) (c); 50 (2) (c) (4).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Drawer and drawee same party: New York etc. Co. v. Selma Sav. Bank, 51 Ala. 305; Bailey v. Southwestern R. R. Bank, 11 Fla. 266; Chicago etc. R. R. Co. v. West, 37 Ind. 211; Gowan v. Jackson, 20 Johns. 176; West Branch Bank v. Fulner, 3 Pa. St. 399; Planters' Bank v. Evans, 36 Texas 592.

2a—When drawee is a fictitious person or without capacity: Wyaman v. Adams, 12 Cush. 210.

3a—When drawer is person to whom instrument is presented for payment: Groth v. Gigger, 31 Pa. St. 271; Magruder v. Union Bank, 3 Pet. 87.

4a—When drawer has no right to expect drawee or acceptor to honor the instrument: Pitts v. Jones, 9 Fla. 519; Cathell v. Goodwin, Har. & Gill. (Md.) 468; Wollenweber v. Ketterlinn, 17 Pa. St. 389; Life Insurance Co. v. Pendleton, 112 U. S. 708; French v. Bank of Columbia, 4 Cranch. 141.

§ 186 (115). When notice need not be given to indorser. Notice of dishonor is not required to be given to an indorser in either of the following cases:[1]

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;[1a]

3. Where the instrument was made or accepted for his accommodation.[2a]

See text, § 172.

Cross sections: 114 (64-1), 142 (82-3).

1—This section construed; Instrument presented to indorser for payment: In re Swift, 106 Fed. Rep. 65; Tuckenback v. McDonald, 164 Fed. 296.

A stockholder in a corporation who indorsed a note before delivery, given to raise money for it and in reality for the benefit of himself and the other indorsers, was not entitled to notice of dishonor: Mercantile Bank of Memphis v. Brisley, Tenn. 113 S. W. 390.

Construing corresponding provisions of English Bills of Exchange Act: 50 (2) (d).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Where the indorser is the person to whom instrument is presented for payment: Hull v. Meyers, 90 Ga. 674.

2a—Instrument made or accepted for his accommodation: Morris v. Birmingham Nat. Bank, 93 Ala. 511, 9 So. 606; Forrey v. Frost, 40 Me. 74; Blenderman v. Price, 50 N. J. Law, 296; Ross v. Bedell, 5 Duer,

465; Sieger v. Second National Bank, 132 Pa. St. 307; French v. Bank of Columbia, 4 Cranch. 141.

§ 187 (116). Notice of non-payment where acceptance refused. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.[1]

See text, § 174.

1—Construing corresponding provision of English Bills of Exchange Act: Sec. 48 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: De La Torre v. Barclay, 1 Stark 7; Campbell v. French, 6 T. R. 200.

§ 188 (117). Effect of omission to give notice of non-acceptance. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.[1]

See text, § 174.

The Wisconsin act (sec. 1678-47) adds: "But this shall not be construed to revive any liability discharged by such omission."

1—Construing corresponding provisions of English Bills of Exchange Act: Sec. 48 (1).

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Dunn v. O'Keefe, 5 M. & S. 282.

§ 189 (118). When protest need not be made; when must be made. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required, except in the case of foreign bills of exchange.[1]

See text, § 178.

Cross section: 260 (152), 268 (160), 220 (132), 225 (137), 213 (129).

1—This section construed: Wisner v. First Nat. Bank (Pa.), 68 Atl. 955.

Construing corresponding provisions of English Bills of Exchange Act: Sec. 51 (1) (2); 89 (4).

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Bay v. Church, 15 Conn. 129; Tate v. Sullivan, 30 Md. 464; Weems v. Farmers' Bank, 15 Md. 231; Ricketts v. Pendleton, 14 Md. 320; Legg v. Vinal, 165 Mass. 555; Amsinck v. Rogers, 189 N. Y. 252, S. C. 103 App. Div. 428; Stephenson v. Dickson, 24 Pa. St. 148.

ARTICLE IX.

DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§ 200 (119.) Instrument; how discharged.
201 (120). When persons secondarily liable on, discharged.
202 (121). Right of party who discharges instrument.
203 (122). Renunciation by holder.
§ 204 (123). Cancellation; unintentional; burden of proof.
205 (124). Alteration of instrument; effect of.
206 (125). What constitutes a material alteration.

Sections 200 to 206 above are the sections of the New York Law.

Sections 119 to 125 above in the parenthesis are the sections used by the commissioners.

The above sections correspond to sections 119 to 125 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: As sections 3422 to 3428 in R. S. of Arizona; as 118 to 124 in Illinois; as 126 to 132 in Kansas and Oregon; as 138 to 144 in Maryland; as 121 to 127 in Michigan; as 118 to 124 in Nebraska; as 3175j to 3175p in Ohio; as 127 to 133 in Rhode Island; as 1679 to 1679-6 in Wisconsin.

§ 200 (119). Instrument; how discharged. A negotiable instrument is discharged:[1]

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

See text, §§ 181, 182, 184, 189.

Cross sections: 148 (88), 55 (29), 204 (123), 80 (50), 204 (123), 202 (121), 201 (120-6), 116 (66), 180 (109).

The Illinois Act omits clause 3.

1—This section construed: Royal Bank v. Goldschmidt, 51 Misc. R. 622; 101 N. Y. S. 101.

Re-exchange cannot be recovered: Pavenstedt v. N. Y. Life Ins. Co., 113 App. Div. 866, 99 N. Y. S. 614; Schwartzman v. Post, 94 App. Div. (N. Y.) 474, 477; see Twelfth Ward Bank v. Brooks, 63 App. Div. 220; 71 N. Y. S. 388; Vanderford v. Farmer's Bank (Md.), 66 Atl. 47; National Citizen's Bank v. Toplitz, 81 App. Div. 593; 81 N. Y. S. 422; Cellers v. Meachem (Oregon), 89 Pac. 426; Wright v. Gansevoort Bank, 52 Misc. Rep. 214, 103 N. Y. S. 548, *semble;* Perry v. Van Norden Trust Co., 103 N. Y. S. 543, *semble;* First Nat. Bank v. Gridley, 112 N. Y. App. Div. 398, 98 N. Y. S. 445; Schwartzman v. Post, 84 N. Y. S. 922; 94 App. 474, 87 N. Y. S. 872; First Nat. Bank v. Diehl (Pa.), 67 Atl. 897; Wolstenholme v. Smith, 97 Pac. 329, *Utah, 1908.*

In the absence of an agreement or surrender of the old note, a new note does not discharge the original instrument: Reynolds v. Schade, Mo. App. 1908, 109 S. W. 629.

Construing corresponding provision of English Bills of Exchange Act: Secs. 59 (1), 59 (3), 63 (1), (2), 61; Nash. v. DeFreville (1900), 2 Q. B. 72.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Possession by acceptor *prima facie* evidence of payment: Baring v. Clark, 19 Pick. 220.

Possession by maker *prima facie* evidence of payment: Perez v. Bank of Key West, 36 Fla. 467; First Natl. Bank v. Harris, 7 Wash. 139; Page Woven Wire Fence Co. v. Pool, 129 Mich. 57; see Miller v. Kreiter, 76 Pa. St. 78; Eckert v. Cameron, 7 Wright 120.

Bank upon payment succeeds to right of holder and acceptor: Pacific Bank v. Mitchell, 9 Met. 297.

Surrender of good note for forged renewal note: Bass v. Inhabitants of Wellsley, 192 Mass. 527.

When renewal note payment although old note not surrendered: Ellis v. Ballou, 129 Mich. 303; Matter of the Utica Plowing Co., 154 N. Y. 268.

Burden of proof of payment upon maker: Guano Company v. Marks, 135 N. C. 59.

Maker liable to indorser who pays: Madison Square Bank v. Pierce, 137 N. Y. 444.

Release of one joint maker releases others: Crawford v. Roberts, 8 Oregon 324.

But the release must be under seal: Shaw v. Pratt, 22 Pick. 305.

§ 201 (120). When person secondarily liable on, discharged. A person secondarily liable on the instrument is discharged:[1, 1a]

1. By any act which discharges the instrument;
2. By the intentional cancellation of his signature by the holder;
3. By the discharge of a prior party;[2a]
4. By a valid tender of payment made by a prior party;[3a]
5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;[4a]
6. By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless the right of recourse against such party is expressly reserved.[5a]

See text, § 192.

Cross sections: 78 (48), 200 (119), 114 (64-1).

The Missouri act adds: "Except when such discharge is had in bankruptcy proceedings," after subdivision 3.

The Wisconsin act (Secs. 1679-1) adds a subdivision after the words, "by a prior party," which is as follows: "By giving up or applying to other purposes collateral security applicable to the debt, or, there being in the holder's hands or within his control the means of complete or partial satisfaction, the same are applied to other purposes."

The Wisconsin act substitutes for subdivision 6 the following: "By an agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument unless made with the assent, prior or subsequent, of the party secondarily liable, unless the right of recourse against such party is expressly reserved, or unless he is fully indemnified."

The acts of Colorado, Connecticut, District of Columbia, Florida, Massachusetts, North Carolina, North Dakota, Oregon, Tennessee, Utah, Virginia and Washington insert after "right to enforce the instrument" the words, "unless made with the assent of the party secondarily liable, or." Maryland, Rhode Island and Wisconsin omit it.

1. This section construed: Dakey v. Choquet (R. I.), 67 Atl. Rep. 421; McCormick v. Shea, 50 Misc. R. 592, 99 N. Y. S. 467; State Bank v. Kahn, 49 Misc. R. 500, 98 N. Y. S. 858; Wolstenholme v. Smith, 97 Pac. 329 (*Utah, 1908*); Walker v. Washington Title Ins. Co., 19 App. Cas. (D. C.) 575; Miners' Bank v. Rogers (Mo. App.), 100 S. W. 534; Vanderford v. Farmers and Mechanics' Nat. Bank (Md.), 66 Atl. 47, 10 C. R. A. (N. S.) 129.

Construing corresponding provision in English Bills of Exchange Act: Intentional cancellation by holder, not in B. E. A., Sec. 63 (2). See Bank of Scotland v. Dominion Bank (1891), App. Cas. 592.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Contract to extend must have valid consideration: Stieber v. Schack, 83 Ill. 192; Wilson v. Powers, 130 Mass. 127; Cary v. White,

52 N. Y. 138; German-American Bank v. Niagara Cycle Co., 13 App. Div. (N. Y.) 450; Holliday v. Hart, 30 N. Y. 474.

Mere indulgence does not: Lockwood v. Crawford, 18 Conn. 376; Friedenberg v. Robinson, 14 Fla. 130; Bank of Utica v. Ins. Co., 17 Wend. 501; Crawford v. Millspaugh, 13 Johns. 87; Smith v. Erwin, 77 N. Y. 466.

Not true when right of holder against indorser is retained: Hagey v. Hill, 75 Pa. St. 108, 111.

Right of recourse against secondary party reserved: Rockville Nat. Bank v. Holt, 58 Conn. 526; Hodges v. Elyton Land Co., 109 Ala. 617, 20 So. 23; Kenworthy v. Sawyer, 125 Mass. 28; Bank v. Simpson, 90 N. C. 469; Wagman v. Hoag, 14 Barb. 233, 239; Hagey v. Hill, 75 Pa. St. 108; Morse v. Huntington, 40 Vt. 488; Sawyers v. Campbell, 107 Iowa 397, 78 N. W. 56.

Accommodation maker not discharged by extension granted to indorser: National Citizen's Bank v. Toplitz, 181 App. Div. 593; see Delaware County Trust Co. v. Title Ins. Co., 199 Pa. St. 17; Cellers v. Lyons, 89 Pac. Rep. 426, 10 L. R. A. (N. S.) 133.

2a—Discharge of prior party: Brewer v. Boynton, 71 Mich. 254; Farmers' Bank v. Sprigg, 11 Md. 390; Couch v. Waring, 9 Conn. 261; Bridges v. Blake, 106 Ind. 332; Spies v. National City Bank, 174 N. Y. 222; Shutts v. Fingar, 100 N. Y. 539; West River Bank v. Taylor, 34 N. Y. 128, 131; Gunnis v. Weighley, 114 Pa. St. 194; Cole v. Cushing, 8 Pick. 48.

3a—Valid tender of payment by prior party: Spurgeon v. Smiths, 114 Ind. 453; Sears v. Van Dusen, 25 Mich. 351; Joslyn v. Eastman, 46 Vt. 258.

4a—Express reservation of holder's rights against party secondarily liable: Tombeckbe Bank v. Stratton, 7 Wend. 429; Gloucester Bank v. Worcester, 10 Pick. 528; Stewart v. Eden, 2 Cal. 121; First Nat. Bank v. Peltz, 176 Pa. 513; Guarantee Co. v. Craig, 155 Pa. St. 343.

5a—Any extension will discharge: Friedenberg v. Robinson, 14 Fla. 130; Nighingale v. Miginnis, 34 N. J. Law. 461; Cary v. White, 52 N. Y. 138; Hubbard v. Gurney, 64 N. Y. 450; Place v. McElvain, 38 N. Y. 960; Siebeneck v. Anchor Savings Bank, 111 Pa. St. 187.

New security payable on demand does not discharge: Board of Education v. Fonda, 77 N. Y. 350, 362.

Nor when taken merely as collateral: Falkill Nat. Bank v. Sleight, 1 App. Div. 189, 191; United States v. Hodge, 6 How. (U. S.) 279.

Burden of proof that indorser assented to extension: Siebenck v. Anchor Savings Bank, 111 Pa. St. 187.

Party secondarily liable giving consent to extension is not discharged: Siebeneck v. Anchor Savings Bank, 111 Pa. St. 187; Pimental v. Marques, 109 Calif. 406, 42 Pac. 159; Bishop v. Eaton, 161 Mass. 496, 37 N. E. 665.

§ 202 (121). Right of party who discharges instrument. Where the instrument is paid by a party secondarily liable thereon,[1, 1a] it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and,

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.[2a]

See text, § 182.

Cross section: 200 (119), 118 (68).

1—This section construed: Twelfth Ward Bank v. Brooks, 63 App. Div. 220, 71 N. Y. S. 388; Polhemus v. Prudential Corporation (N. J.), 67 Atl. 303; Quimby v. Varnun, 190 Mass. 211, 76 N. E. 671.

An accommodation note is discharged by a payment in due course by the party accommodated: Marling v. Jones (*Wis., 1909*), 119 N. W. 931.

Construing corresponding provision of English Bills of Exchange Act: Secs. 59 (2) (a) (b), 59 (3).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—French v. Jarvis, 29 Conn. 347; Reinhart v. Schall, 69 Md. 352; Gardner v. Maynard, 7 Allen 456; Davis v. Miller, 14 Gratt. 1; Gould v. Eager, 17 Mass. 615; Hill v. Buchanan, 71 N. J. L. 301; First Nat. Bank v. Harris, 7 Wash. 139; Citizen's Bank v. Say, 80 Va. 436; Coleman v. Dunlap, 18 S. C. 591; Fenny v. Dugdale, 40 Mo. 63.

2a—Paid by accommodation makers, etc.: First Nat. Bank v. Maxfield, 83 Me. 576; Lambach v. Pursell, 35 N. J. L. 434; Kelly v. Burroughs, 102 N. Y. 93; Dillenbeck v. Bygert, 97 N. Y. 303; Cottrell v. Watkins, 89 Va. 801. See Kaschner v. Conklin, 40 Conn. 81; Canadian Bank v. Combe, 47 Mich. 358; Hanish v. Kennedy, 106 Mich. 455.

§ 203 (122). Renunciation by holder. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.[1]

See text, § 191.

Cross section: 201 (120).

1—This section construed: Faneuil Hall Nat. Bank v. Meloon, 183 Mass. 66, 66 N. E. 410; Baldwin v. Varnum, 41 Wash. 416, 83 Pac. 734; Lask v. Den, 92 N. Y. S. 891.

Construing corresponding provision of English Bill of Exchange Act: Sec. 62 (1), (2); In re George 44 Ch. D. 627; Edwards v. Walters (1896), 2 Ch. 157.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it. Renunciation discharging instrument: Slade v. Mutrie, 156 Mass. 19, 30 N. E. 168; Larkin v. Hardenbrook, 90 N. Y. 333; Leask v. Dew, 92 N. Y. Supp. 891.

§ 204 (123). Cancellation; unintentional; burden of proof. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.[1]

See text, § 184.

Cross sections: (120-2), (66), (109), (119-5), (1-4).

The Illinois Act changes this some.

1—This section construed: McCormick v. Shea, 50 Misc. R. 592, 99 N. Y. S. 467; First Bank v. Gridly, 112 App. Div. 398, 98 N. Y. S. 445; Gilley v. Harrell (Tenn.), 101 S. W. 424.

Construing corresponding provision of English Bill of Exchange Act: Sec. 63 (3); Dominion Bank v. Anderson, 15 Sess. Cas. (1888) 408; Dominion Bank v. Bank of Scotland, 16 Sess. Cas. (1889) 1081, and S. C. affirmed (1891), A. C. 592.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Humboldt Bank v. Rossing, 95 Iowa 1; Lyndonville Nat. Bank v. Fletcher, 68 Vt. 81; Paper v. Birkbeck, 15 East 17; Wilkinson v. Johnson, 3 B. & C. 428.

§ 205 (124). Alteration of instrument; effect of. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers.[1, 1a] But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.[1, 1a]

See text, §§ 144, 188.

Cross sections: 116 (66), 180 (109), 200 (119-5), 55 (29), 206 (125), 114 (64-1), 51 (25), 91 (52), 28 (9-5), 35 (16), 95 (56), 2 (191).

The Wisconsin act (Sec. 1679-5) inserts after "assented," "orally or in writing."

1. This section construed: N. Y. Life Ins. Co. v. Martindale (Kan.), 88 Pac. 559; Stanley v. Danis (Ky.), 107 S. W. 773; Mitchell v. Reed's Ex'r (Ky.), 106 S. W. 833; Thorpe v. White, 188 Mass. 333; First Nat. Bank v. Gridley, 112 App. Div. 398, 98 N. Y. S. 445; Hoffman v. Planters' National Bank, 99 Va. 480, 39 S. E. 134; Nottingham v. Ackers (Va.), 57 S. E. 592; Merchants' Bank Assoc. v. Lesser, 76 App. Div. 614, 78 N. Y. S. 629; Mutual Loan Association v. Lesser, 81 App. Div. 138, 80 N. Y. S. 1112; First National Bank of Wilkesbarre v. Barnum, 160 Fed. 245; Birmingham Trust Co. v. Whitney, 95 App. Div. 280, 88 N. Y. S. 578; Bryan v. Harr, 21 App. (D. C.), 190; Smith v.

State Bank, 54 Misc. R. 550, 104 N. Y. S. 750; Packard v. Windholtz, 88 App. Div. 365, 84 N. Y. S. 666, *semble*, 180 N. Y. 549; Trustees of America Bank v. McComb, 105 Va. 473, 54 S. E. 14; Hecht v. Shenners, 126 Wis. 27, 105 N. W. 359; Elias v. Whitney, 50 Misc. R. 326, 98 N. Y. S. 667; Wood v. Skelly (Mass.), 81 N. E. 872 (N. I. L. not cited); Ofenstein v. Bryan, 20 App. (D. C.) 1 (N. I. L. not cited); Towles v. Tanner, 21 App. (D. C.) 530, *semble* (N. I. L. not cited); Colonial Nat. Bank v. Duerr, 108 App. Div. 215, 95 N. Y. S. 810; Mass. Nat. Bank v. Snow, 187 Mass. 159, 72 N. E. 959; Moskowitz v. Deutsch, 46 Misc. R. 603, 92 N. Y. S. 721; Thorpe v. White, 188 Mass. 333, 74 N. E. 592; First National Bank v. Gridley, 112 App. Div. 398, 98 N. Y. S. 445; Bothwell v. Schweitzer et. al. (Neb. 1909), 120 N. W. 1129.

N. I. L. does not change rule in case of blank spaces left by maker: Young v. Grote, 4 Bing. 253.

The defendant is not liable to bona fide purchaser by reason of negligence in permitting unfilled spaces to remain by means of which it was possible for the maker to raise the note from $75 to $375, the defendant being liable on the paper according to its original tenor: Nat. Ex. Bank of New Albany v. Lester, (New York, March, 1909), 87 N. E. 778; Nat. Exch. Bank v. Leater, 119 App. Div. 786, 104 N. Y. S. 418; Tinbel v. Garfield Nat. Bank, 121 App. Div. 870, 106 N. Y. S. 497.

Alteration by stranger: Jeffrey v. Rosenfeld, 179 Mass. 506, 61 N. E. 49.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 64 (1); Schofield v. Londesborough (1896), A. C. 514; Colonial Bank of Australasia v. Marshall (1906), A. C. 559; Imperial Bank v. Bank of Hamilton (1903), A. C. 49.

Proviso: Leeds County Bank v. Walker, 11 Q. B. D. 84.

1a—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Harris v. The Bank of Jacksonville, 20 Fla. 501, 512; Simpson v. Davis, 119 Mass. 269; Town of Solon v. Williamsburgh Savings Bank, 114 N. Y. 122, 135; Gowdy v. Robbins, 3 App. Div. 353; Citizens' Nat. Bank v. Williams, 174 Pa. St. 66; Gettysburg National Bank v. Chisolm, 169 Pa. St. 564; Paine v. Edsell, 19 Pa. St. 178.

Altered but in hands of holder in due course: Drum v. Drum, 133 Mass. 566; Citizens' Nat. Bank v. Richmond, 121 Mass. 110; Wood v. Steele, 6 Wall. 80; McCormick v. Shea, 50 Misc. 592; Hartley v. Carboy, 150 Pa. St. 23; Gettysburg National Bank v. Chisolm, 169 Pa. St. 564. Compare Gleason v. Hamilton, 138 N. Y. 853; Town of Solon v. Williamsburg Savings Bank, 114 N. Y. 122, 134.

Material alteration releases all parties not assenting: Glover v. Green, 96 Ga. 126, 22 S. E. 664; Horn v. Newton City Bank, 32 Kan. 518; Aldrich v. Smith, 137 Mich. 468; Hulburt v. Hall, 39 Neb. 889, 58 N. W. 538.

But spoliation or alteration by a stranger does not release the parties: United States v. Spalding, 2 Mason 478, Fed. Cas. No. 16,365; Walsh v. Hunt, 120 Calif. 46, 52 Pac. 115; White Sewing Machine Company v. Dakin, 86 Mich. 581; Union Nat. Bank v. Roberts, 45 Wis. 373.

Holder in due course could not in most states before the adoption of the Negotiable Instruments Law enforce payment according to original tenor: Greenfield Savings Bank v. Stowell, 123 Mass. 196; Bradley v. Mann, 37 Mich. 1; Mersman v. Merges, 112 U. S. 141.

§ 206 (125). What constitutes a material alteration. Any alteration which changes:

1. The date;[1a]
2. The sum payable,[2a] either for principal [3a] or interest;[4a]
3. The time [5a] or place [6a] of payment;
4. The number or the relations of the parties;[7a]
5. The medium or currency in which payment is to be made;[8a] or which adds a place of payment where no place of payment is specified,[9a] or any other change or addition [10a] which alters the effect of the instrument in any respect, is a material alteration.[1]

See text, § 188.

Cross sections: 32 (13), 33 (14), 114 (64), 54 (28), 205 (124).

1—This section construed: Birmingham Trust Co. v. Whitney, 95 App. Div. 280, 88 N. Y. S. 578; Hoffman v. Planters' Nat. Bank, 99 Va. 480, 39 S. E. 134.

Annexing revenue stamp not alteration: Rowe v. Bowman, 183 Mass. 488, 67 N. E. 636.

Insertion of figure 5 before 9 forgery: Lawless v. State, 114 Wis. 189, 89 N. W. 891.

A bill in equity should describe alterations: Jeffrey v. Rosenfeld, 179 Mass. 506, 61 N. E. 49, *semble*.

Striking out the name of the bank when notes are payable and substituting the name of another bank is a material alteration: First Nat. Bank of Wilkes-Barre v. Barnum, 160 Fed. 245.

Construing corresponding provision of English Bill of Exchange Act: 64 (2) omits words, "either for principal or interest"; Meyer v. Deeroix (1891), A. C. 520.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—The date: Wood v. Steele, 6 Wall. 80; Natl. Ulster County Bank v. Madden, 114 N. Y. 280; Moskowitz v. Deutsch, 46 Misc. (N. Y.) 603; Crawford v. West Side Bank, 100 N. Y. 50, 56; Newman v. King, 54 Ohio St. 273; Johnson v. Johnson's Est., 66 Mich. 525.

2a—Sum payable: Hewins v. Caryill, 67 Maine 554; Colonial National Bank v. Duer, 108 App. Div. (N. Y.) 215; Gettysburg National Bank v. Chisolm, 169 Pa. St. 564; Batcheldor v. White, 80 Va. 103.

3a—Principal: Walsh v. Hunt, 120 Calif. 46, 52 Pac. 115; Aetna Bank v. Winchester, 43 Conn. 391; Hewins v. Cargill, 67 Me. 554; People v. Brown, 2 Doug. (Mich.) 9.

4a—Interest: Baent v. Kennicutt, 57 Mich. 268.

5a—Time: Weyman v. Yeomans, 84 Ill. 403; Rogers v. Vosburgh, 87 N. Y. 208; Miller v. Gilleland, 19 Pa. St. 119; Jourdan v. Boyce, 33 Mich. 302; Lewis v. Kramer, 3 Md. 265.

6a—Place: Tidmarsh v. Grover, 1 Maule & S. 735; Bank of Ohio Valley v. Lockwood, 13 W. Va. 392; Ballard v. Insurance Co., 81 Ind. 239; Bank v. Lockwood, 13 W. Va. 392.

7a—Parties: Brownell v. Winnie, 29 N. Y. 400; Union Banking Co.

v. Martin's Est., 113 Mich. 521; McCaughey v. Smith, 27 N. Y. 39; Babcock v. Murray, 58 Minn. 385; Mersenan v. Werges, 112 U. S. 139.

8a—Medium of payment: Darwin v. Rippey, 63 N. C. 318; Church v. Howard, 17 Hun 5; Wills v. Wilson, 3 Oregon 308; Angle v. Insurance Co., 92 U. S. 330; Bogarth v. Breedlove, 39 Tex. 561.

9a—Place of payment added: Pelton v. Lumber Co., 13 Cal. 21, 45 Pac. 12; Carlton v. Reed, 61 Iowa 166; Whitesides v. Northern Bank, 10 Bush. 501; Burchfield v. Moore, 33 L. J. Q. B. 261.

10a—Other changes: Thornton v. Appleton, 29 Me. 298; Brackett v. Mountfort, 11 Me. 115; Homes v. Wallis, 11 Mass. 310; Smith v. Dunham, 8 Pick. 246; Wegerhauser v. Dun, 100 N. Y. 150; Fuller v. Green, 64 Wis. 159; Wait v. Pomeroy, 20 Mich. 425.

ARTICLE X.

BILLS OF EXCHANGE—FORM AND INTERPRETATION.

§ 210 (126). Bill of exchange defined.
211 (127). Bill not an assignment of funds in hands of drawee.
212 (128). Bill addressed to more than one drawee.
§ 213 (129). Inland and foreign bills of exchange.
214 (130). When bill may be treated as promissory note.
215 (131). Drawee in case of need.

Sections 210 to 215 above are the sections of the New York Law.

Sections 126 to 131 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 126 to 131 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: As sections 3429 to 3434 in Arizona; as 125 to 130 in Illinois; as 133 to 138 in Kansas and Oregon; as 145 to 150 in Maryland; as 128 to 133 in Michigan; as 125 to 130 in Nebraska; as 3175q to 3175v in Ohio; as 134 to 139 in Rhode Island; as 1680a to 1680e in Wisconsin.

§ 210 (126). Bill of exchange defined. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.[1]

See text, § 39.

1—This section construed: Amsick v. Rogers, 189 N. Y. 252, 82 N. E. 134; Van Buskirk v. State Bank, 35 Colo. 142, 83 Pac. 778; Columbian Banking Co. v. Bowen (Wis.), 114 N. W. 451.

Construing corresponding provision of the English Bills of Exchange Act: Secs. 3 (1), (2), 8 (4)—Bills of Exchange Act; 3 (2)—Bavins v. London & S. W. Bank, 1 Q. B. 271; 8 (4)—Meyer v. Decraix (1891), A. C. 520; McLean v. Clydesdale Banking Co., 9 L. R. App. Cas. 95; Lawson's Executors v. Watson (1907), S. C., 1353 Ct. of Sess.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Jarvis v. Wilson, 46 Conn. 91; Biesenthall v. Williams, 1 Duv. (Ky.) 329.

§ 211 (127). Bill not an assignment of funds in hands of drawee. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same.[1]

See text, § 72.

Cross sections: See section 325 as to checks.

1—This section construed: B. & O. R. R. Co. v. First Natl. Bank, 102 Va. 753, 47 S. E. 837; Wadhams v. Portland Ry. Co., 37 Wash. 86, 79 Pac. 597; Fulton v. Gesterding, 47 Fla. 150, 36 So. 56; Nelson v. Nelson Bennett Co., 31 Wash. 116, 71 Pac. 749.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 53 (1), (2), Bills of Exchange Act; British Linen Co. Bank v. Carruthers, 10 Sess. Cas. 923.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Reilly v. Daily, 159 Pa. St. 605; Bailey v. Southwestern R. R. Bank, 11 Fla. 266; Harris v. Clark, 3 N. Y. .93; Mandeville v. Welch, 5 Wheat. 286; Alger v. Scott, 54 N. Y. 14; Meinger v. Shannon, 61 N. Y. 251; Brill v. Tuttle, 81 N. Y. 454, 457; Throop Grain Cleaner Co. v. Smith, 110 N. Y. 83; Upham v. Clute, 105 Mich. 350; Stone v. Dowling, 119 Mich. 476.

There is a conflict of authority whether a draft operates as an assignment. When the drawing is for the whole amount due, see Mandeville v. Welch, 5 Wheat. 277; Corser v. Craig, 1 Wash. C. C. 424, Fed. Cas. No. 3,255; Cutts v. Perkins, 12 Mass. 207; First National Bank v. Dulseque S. R. Co., 52 Iowa 378; Stone v. Dowling, 119 Mich. 476; Moore v. Davis, 57 Mich. 251.

As to the rule when the drawing is for part of the amount due: First National Bank v. Coats, 8 Fed., 540; Brill v. Tuttle, 81 N. Y. 457; Throop etc. Co. v. Smith, 110 N. Y. 90; Gibson v. Cooke, 20 Pick. 15; Hopkinson v. Forster, L. R. 19 Eq. 74.

§ 212 (128). Bill addressed to more than one drawee. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.[1]

See text, § 52.

The words, "or in succession," are not included in the Wisconsin act.

1—Construing corresponding provision of English Bills of Exchange Act: Sec. 6 (2), Bills of Exchange Act.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: See Anon., 12

Mod. 447; Tombeckbee Bank v. Durell, 5 Mason 56, Fed. Cas. No. 14,081.

§ 213 (129). Inland and foreign bills of exchange. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.[1]

See text, § 39.

1—This section construed: Amsinck v. Rogers, 189 N. Y. 252, 82 N. E. 134.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 4 (1), (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Yale v. Ward, 30 Tex. 18; Commercial Bank of Ky. v. Varmun, 49 N. Y. 269; Life Ins. Co. v. Pendleton, 112 U. S. 696; Armstrong v. American Ex. Natl. Bank, 133 U. S. 433; Buckner v. Finley, 2 Peters 586; Joseph v. Solomon, 19 Fla. 623; Phoenix Bank v. Hussey, 12 Pick. 483; Thompson v. Commercial Bank, 3 Caldw. 49; Union Bank v. Fowlkes, 2 Smed. 556; Grinshaw v. Bender, 6 Mass. 157.

The different states of the United States are foreign to each other: Bank of U. S. v. Daniel, 12 Peters 32.

A foreign bill must be protested, while an inland need not be: Buller v. Crips, 6 Mod. 29.

§ 214 (130). When bill may be treated as promissory note. Where in a bill the drawer and drawee are the same person or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.[1]

See text, § 52.

The Wisconsin act (Sec. 1680d) omits "or a person."

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 5 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Frank v. Babbitt, 156 Ill. 408, 41 N. E. 166; Planters' Bank v. Evans, 36 Tex 592; Miller v. Thomson, 3 M. & G. 576; Com. v. Butterick, 100 Mass. 12; Chicago etc. R. Co. v. West, 37 Ind. 211; Hasey v. White Pigeon Beet Sugar Co., 1 Doug. (Mich.) 193; Willans v. Ayers, L. R. 3 App. Cas. 133.

§ 215 (131). Referee in case of need. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case

the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.[1]

See text, §§ 155, 52.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 15.

The last part of this section put at rest the question whether presentment to the "referee in case of need" is obligatory or optional.

ARTICLE XI.

ACCEPTANCE OF BILLS OF EXCHANGE.

§ 220 (132). Acceptance, how made, etc.
221 (133). Holder entitled to acceptance on face of bill.
222 (134). Acceptance by separate instrument.
223 (135). Promise to accept; when equivalent to acceptance.
224 (136). Time allowed drawee to accept.
§ 225 (137). Liability of drawee retaining or destroying bill.
226 (138). Acceptance of incomplete bill.
227 (139). Kinds of acceptance.
228 (140). What constitutes a general acceptance.
229 (141). Qualified acceptance.
230 (142). Rights of parties as to qualified acceptance.

Sections 220 to 230 above are the sections of the New York Law.

Sections 132 to 142 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 132 to 142 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Montana, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, Washington, West Virginia, Wyoming.

They are found as the following sections in the following states and territories: As sections 3435 to 3445 in Arizona; as 131 to 141 in Illinois; as 139 to 149 in Kansas and Oregon; as 151 to 161 in Maryland; as 134 to 144 in Michigan; as 131 to 141 in Nebraska; as 3175w, 3175x, 3175y, 3175z, 3176, 3176a, 3176b, 3176c, 3176d, 3176e and 3176f in Ohio; as 140 to 150 in Rhode Island; as 1680f to 1680p in Wisconsin.

§ 220 (132). Acceptance; how made, et cetera. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.[1]

See text, §§ 71, 73.

Cross sections: Sec. 2. "Acceptance means an acceptance completed by delivery or ratification."

1—This section construed: Seattle Shoe Co. v. Packard, 43 Wash. 527, 86 Pac. 845; B. & O. R. R. Co. v. First Nat'l Bank, 102 Va. 753,

47 S. E. 837; Van Buskirk v. State Bank, 35 Colo. 142, 83 Pac. 778; Nelson v. Nelson Bennett Co., 31 Wash. 116; 71 Pac. 749; Wadhams v. Portland Ry. Co., 37 Wash. 86, 79 Pac. 597; Barnsdall v. Waltemeyer, 142 Fed. Rep. 415, C. C. A. 8th Circ. (Colo.); Izzo v. Ludington, 79 App. Div. 272, 79 N. Y. S. 744; Wisner v. First Nat'l Bank (Pa.), 68 Atl. 955.

Construing corresponding provision of the English Bills of Exchange Act: Russell v. Phillips, 14 Q. B. 891; Steele v. McKinlay, 5 App. Cas. 754, 29 W. R. 17.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Meyer v. Beardley, 29 N. J. Law 236; Superior City v. Ripley, 138 U. S. 93; Spear v. Pratt, 2 Hill 582; Wheeler v. Webster, 1 E. D. Smith; North Atchinson Bank v. Garretson, 51 Fed. Rep. 167; Scudder v. Union Bank, 91 U. S. 406; Hall v. Cordell, 142 U. S. 116; Council Bluffs Branch, 34 Ill. 313; Ward v. Allen, 2 Metc. 53; Sturges v. Chicago Fourth Nat. Bank, 75 Ill. 595; Peterson v. Hubbard, 28 Mich. 197; Cook v. Baldwin, 120 Mass. 317; Upham v. Clute, 105 Mich. 350.

According to the law merchant an acceptance could be oral or written, and if written could be on the bill itself or on a separate paper. Acceptance by telegram has been held sufficient: North Atchinson Bank v. Garretson (*supra*).

§ 221 (133). Holder entitled to acceptance on face of bill. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and if such request is refused, may treat the bill as dishonored.[1]

See text, § 73.

1—This section construed: Negotiable Instruments Law, Laws 1897, p. 746, c. 612, § 221, providing that the holder of a bill presenting it for acceptance, may require that the acceptance be written on the bill, and if such request is refused may treat the bill as dishonored, is not confined to sight bills, but seems to be applicable to all bills of exchange: Nat. Bank v. Saitta, 111 N. Y. S. 927.

The acceptance here spoken of is what has been known as "proper" acceptance, such acceptance as the holder is entitled to demand.

§ 222 (134). Acceptance by separate instrument. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.[1]

See text, § 82.

1—The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Fairchild v. Feltman, 32 Hun 398.

In Bank v. Garretson, 51 Fed. 168, one had given assurance that if a certain draft were drawn he would accept the same.

In Clarke v. Cock, 4 East 57, Lord Ellenborough said: "It may be for the convenience of mercantile affairs that a bill may be accepted by a collateral writing without the bill itself coming to the actual touch of the acceptor, which would sometimes create great delay."

§ 223 (135). Promise to accept; when equivalent to acceptance. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.[1]

See text, § 82.

The Illinois Act inserts the words "or after" in the third line.

1—This section construed: Bank of Morganton v. Hay, 143 N. C. 326.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: "A letter written a reasonable time before or after the date of the bill of exchange, describing it in terms not to be mistaken, and promising to accept it, if shown to the person who afterwards takes the bill on the credit of the letter, a virtual acceptance binding the person who makes the promise." Coolidge v. Payson, 2 Wheat. 66; Ruiz v. Renald, 100 N. Y. 256; Merchants' Bank v. Griswald, 72 N. Y. 472; Shower v. Western Union Tel. Co., 57 N. Y. 459, 463; Bank of Michigan v. Ely, 17 Wend. 508; N. Y. & N. H. R. R. Co. v. Schuyler, 34 N. Y. 30; Barney v. Worthington, 37 N. Y. 112; Germania Nat'l Bank v. Tooke, 101 N. Y 442; Ulster Co. Bank v. McFarlan, 5 Hill 432; Dull v. Bricker, 76 Pa. St. 255; Williams v. Williams, 2 Gr. (N. J.) 239; Javis v. Wilson, 46 Conn. 91; Johnson v. Clark, 39 N. Y. 216; Bissell v. Lewis, 4 Mich. 450; North Atchinson Bank v. Garretson, 51 Fed. Rep. 167; Franklin Bank v. Lynch, 52 Md. 270; First Nat. Bank v. Clark, 61 Md. 400; Scott v. Pickington, 15 Abb. Pr. 280; Brown v. Ambler, 66 Md. 391; Howland v. Carson, 15 Pa. St. 453.

At common law the promise was sufficient if made orally: Jarvis v. Wilson, 46 Conn. 91; Scudder v. Union National Bank, 91 N. Y. 406; Dull v. Bricker, 76 Pa. St. 255.

An absolute unconditional authority to make drafts is equivalent to an acceptance of the draft drawn in pursuance of such authority: Bissell v. Lewis, *supra;* Ruiz v. Renald, *supra.*

If there is a condition as to the performance of an act or the existence of a fact these must be shown: Bank of Montreal v. Recknagel, 109 N. Y. 482; Bank of Atchinson Co. v. Bohart Commission Company, 84 Mo. App. 421.

The promise may be made before the bill is drawn: Putnam Bank v. Snow, 172 Mass. 569; or it may be made afterwards, Central Bank v. Richards, 109 Mass. 413.

§ 224 (136). Time allowed drawee to accept. The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.[1]

See text, § 90.

1—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Overman v. Hoboken City Bank, 31 N. J. L. 563; Case v. Burt, 15 Mich. 82; Connelly v. McKean, 64 Pa. St. 113.

§ 225 (137). Liability of drawee retaining or destroying bill. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.[1]

See text, § 85.

Illinois omits this section.

The Wisconsin act (Sec. 1680k) adds: "Mere retention of the bill is not acceptance."

1—This section construed: Westberg v. Chicago Lumber Co., 117 Wis. 589, 94 N. W. 572; Wisner v. First Nat'l Bank (Pa.), 68 Atl. 955. See Matterson v. Moulton, 79 N. Y. 627, for construction of a similar section prior to the enactment of the Negotiable Ins. Law in New York.

The act of a bank in delivering checks to a notary public for protest is not a compliance with the act, and does not relieve the drawee from liability. Provident Securities & Banking Co. of Boston v. First Nat. Bank, 37 Pa. Super. Ct. 17.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: State Bank v. Weiss, 91 N. Y. S. 276; Dickinson v. Marsh, 57 Mo. App. 566; St. Louis & S. W. Ry. Co. v. Jones, 78 Ark. 490.

The mere retention of the bill alone in some jurisdictions does not amount to an acceptance: Mason v. Barth, 2 B. & Ald. 26; Overman v. Hoboken City Bank, 31 N. J. L. 563; Colo. Nat. Bank v. Boetcher, 5 Colo. 185.

§ 226 (138). Acceptance of incomplete bill. A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.[1]

See text, § 77.

Cross sections: See Sec. 33 (14).

1—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Stock-

well v. Bramble, 3 Ind. 428; William v. Winan, 14 N. J. L. 339; Exchange Bank v. Rice, 98 Mass. 288; Grant v. Shaw, 16 Mass. 344; Hopps v. Savage, 69 Md. 513; Leavitt v. Putnam, 3 N. Y. 494; Spaulding v. Andrews, 48 Pa. St. 411; Bank v. Neal, 22 How. (63 U. S.) 107.

A presumption arises that a bill has been accepted before maturity and within a reasonable time after its issue unless the terms of the bill show something different: Roberts v. Bethell, 12 C. B. 778.

§ 227 (139). Kinds of acceptance. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.[1]

See text, §§ 78, 79.

1—Construing corresponding provision of the English Bills of Exchange Act: Meyer & Co. v. DeCroix (1891), App. Cas. 520.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Niagara Bank v. Fairman Co., 31 Barb. 403; Walker v. Bank of State of N. Y., 13 Barb. 403; May City Bank v. Lauman, 19 N. Y. 477; Meyers v. Standart, 11 Ohio St. 29; Cox v. Nat. Bank, 100 U. S. 714; Corbett v. Clark, 45 Wis. 403; Sylvester v. Staples, 44 Me. 496.

§ 228 (140). What constitutes a general acceptance. An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.[1]

See text, § 79.

1—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Rome v. Young, 2 Brad. & Bing. 165, 2 Bligh. 391; Wallace v. McConnell, 38 U. S., 13 Peters 136; Cox v. Nat. Bank, 100 U. S., 10 Otto 704; Myers v. Standart, 11 Ohio St. 29; Troy City Bank v. Lauman, 19 N. Y. 477; Niagara Bank v. Fairman etc. Mfg. Co., 31 Barb. 403. See also note to Sec. 130 (70).

§ 229 (141). Qualified acceptance. An acceptance is qualfied, which is:

1. Conditional,[1a] that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial,[2a] that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

3. Local,[3a] that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;[4a]

5. The acceptance of some one or more of the drawees, but not of all.[5a]

See text, § 80.

Cross section: See Sec. 228 (140).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Conditional: Marshall v. Burrby, 25 Florida 619; Brockway v. Allen, 17 Wend. 40; Myrick v. Merritt, 22 Fla. 335; Newhall v. Clark, 3 Cush. 376; Cook v. Wolfendale, 105 Mass. 401; Lamon v. French, 25 Wis. 37; Greene v. Duncan, 37 S. C. 239; Stevens v. Androscoggin Water Power Co., 62 Me. 498; Herter v. The Goss & Edsall Co., 57 N. J. L. 42, 30 A. 252.

2a—Partial: Petit v. Benson, 2 Comb. 452; Wegerslofe v. Keene, 1 Stra. 214.

3a—Local: See Sec. 228 (140).

4a—Qualified as to time: Hatcher v. Stalworth, 25 Miss. 376; Russell v. Phillips, 14 Q. B. 891, 68 E. C. L. 891.

5a—Not of all: Tombeckbee Bank v. Dunell, 5 Mason 56, Fed. Cas. No. 14,081; Smith v. Milton, 133 Mass. 369.

§ 230 (142). Rights of parties as to qualified acceptance. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.[1a]

See text, §§ 121, 75.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Cline v. Miller, 8 Md. 274; Walker v. N. Y. State Bank, 9 N. Y. 582; Wintermute v. Post, 24 N. J. L. 420; Shackelford v. Hooker, 54 Miss. 716; Gibson v. Smith, 75 Ga. 33; Sebag v. Abitbol, 4 M. & S. 462.

ARTICLE XII.

PRESENTMENT OF BILLS OF EXCHANGE FOR ACCEPTANCE.

§ 240 (143). When presentment for acceptance must be made.
241 (144). When failure to present releases drawer and indorser.
242 (145). Presentment; how made.
243 (146). On what days presentment may be made.
§ 244 (147). Presentment; where time is insufficient.
245 (148). When presentment is excused.
246 (149). When dishonored by non-acceptance.
247 (150). Duty of holder where bill not accepted.
248 (151). Rights of holder where bill not accepted.

Sections 240 to 248 above are the sections of the New York Law.

Sections 143 to 151 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 143 to 151 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Virginia, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: As sections 3446 to 3454 in Arizona; as 142 to 150 in Illinois; as 150 to 158 in Kansas and Oregon; as 162 to 170 in Maryland; as 145 to 153 in Michigan; as 142 to 150 in Nebraska; as 3176g to 3176o in Ohio; as 151 to 159 in Rhode Island; as 1681 to 1681-8 in Wisconsin.

§ 240 (143). When presentment for acceptance must be made. Presentment for acceptance must be made:[1]

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

2. Where the bill expressly stipulates that it shall be presented for acceptance; or,

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary, in order to render any party to the bill liable.

See text, §§ 151, 88.

Cross section: 244 (147).

1—This section construed: See Von Buskirk v. State Bank, 35 Colo. 142, 83 Pac. 778.

The words "or in any other case where" are additional to the corresponding provision of the English Bills of Exchange Act.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 39 (2), (3).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Allen v. Snydam, 17 Wend. 368; Bachellor v. Priest, 12 Pick. 399; Oxford Bank v. Davis, 4 Cush. 188; Plato v. Reynolds, 27 N. Y. 586; Mullick v. Rodakissen, 9 Moore, P. C. 46.

If made where not required, notice must be given: United States v. Barker, 4 Wash. C. C. 464, Fed. Cas. No. 14,520; Sweet v. Swift, 65 Mich. 90.

§ 241 (144). When failure to present releases drawer and indorser. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.[1]

See text, § 153.

Cross section: 4 (193).

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 40 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Gowan v. Jackson, 20 Johns. 176; Robinson v. Ames, 20 Johns. 146; Prescott Bank v. Coverley, 7 Gray 217; Walsh v. Dort, 23 Wis. 334; Phoenix Inst. Co. v. Allen, 11 Mich. 30; Wallace v. Agry, 4 Mason 333, Fed. Cas. No. 17,096; Goupy v. Harden, 7 Taunt. 397; Bridgeport Bank v. Dyer, 19 Conn. 136; Thornburg v. Emmons, 23 W. Va. 333; Phoenix Insurance Co. v. Gray, 13 Mich. 191; Allan v. Eldred, 50 Wis. 132.

Delay in mail sufficient excuse for omission to present immediately for acceptance: Walsh v. Blatchley, 6 Wis. 422.

§ 242 (145). Presentment; how made. Presentment for acceptance [1] must be made by or on behalf of the holder at a reasonable hour on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one

has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustees or assignee.

See text, §§ 89, 90.

Cross sections: 229 (141), Subd. 5; 245 (148), Subd. 1.

1—By mistake the word "drawer" was used instead of "drawee" originally in the New York act. This has now been remedied, but the mistake was followed in some other jurisdictions.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 41 (1) (a), 41 (1) (b), 41 (1) (c), 41 (1) (d).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

On presentment at reasonable hours: Cayuga County Bank v. Hill, 2 Hill 635.

If one of several drawees accepts the bill he is bound by the acceptance: Smith v. Melton, 133 Mass. 369.

In case drawee dead: See Sec. 245.

As to possession and exhibit of the bill: See, First National Bank v. Hatch, 78 Mo. 13; Fall River Union Bank, 5 Met. (Mass.) 216.

As to seeing drawee personally: See, Wiseman v. Chiappella, 64 U. S. (23 How.) 368; Sharpe v. Drew, 9 Ind. 281; Stainback v. Bank, 11 Gratt. 269.

Drawers not partners: See, Union Bank v. Willis, 8 Met. (Mass.) 504; Willis v. Green, 5 Hill 232.

§ 243 (146). On what days presentment may be made. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 132 and 145 of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.[1]

See text, § 153.

Kentucky omits the last sentence of this section.

The sections above were referred to as sections 72 and 85 by mistake in the original New York act.

The Wisconsin act (Sec. 1681-3) omits the last sentence, while the Colorado act (Sec. 146) substitutes for the last sentence the following: "When any day is in part a holiday, presentment for acceptance may be made during reasonable hours of the part of such day which is not a holiday."

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 92.

§ 244 (147). Presentment; where time is insufficient. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.[1]

See text, § 153.

Cross section: 240 (143).

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 39 (4).

§ 245 (148). Where presentment excused. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

2. Where after the exercise of reasonable diligence, presentment cannot be made;

3. Where although presentment has been irregular, acceptance has been refused on some other ground.[1]

See text, § 92.

Cross section: 242 (145), Subd. 2.

1—Construing corresponding provisions of the English Bills of Exchange Act: Sec. 41 (2) (a), 41 (2) (b), 41 (2) (c).

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: As to reasonable diligence, see Sulsbacker v. Bank of Charleston, 86 Tenn. 201.

§ 246 (149). When dishonored by non-acceptance. A bill is dishonored by non-acceptance:[1]

1. When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; or,

2. When presentment for acceptance is excused and the bill is not accepted.

See text, § 154.

1—This section construed: National Park Bank v. Saitta, 111 N. Y. S. 927.

In the North Carolina act (Sec. 149) the word "executed" is used instead of the word "excused."

Construing corresponding provisions of the English Bills of Exchange Act: Sec. 43 (1) (a) (b).

§ 247 (150). Duty of holder where bill not accepted. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.[1]

See text, § 154.

Cross section: 188 (117).

1—This section construed: National Park Bank v. Saitta, 111 N. Y. S. 927.

Construing corresponding provisions of the English Bills of Exchange Act: Sec. 42.

§ 248 (151). Rights of holder where bill not accepted. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary.[1, 1a]

See text, § 154.

1—This section construed: National Park Bank v. Saitta, 111 N. Y. S. 927.

Construing corresponding provisions of the English Bills of Exchange Act: Sec. 43 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Winthrop v. Pepoon, 1 Bay (S. C.) 468; Sterry v. Robinson, 1 Day (Conn.) 11; Watson v. Loring, 3 Mass. 557; Lennox v. Cook, 8 Mass. 460.

ARTICLE XIII.

PROTEST OF BILLS OF EXCHANGE.

§ 260 (152). In what cases protest necessary.
261 (153). Protest; how made.
262 (154). Protest; by whom made.
263 (155). Protest; when to be made.
264 (156). Protest; where made.
§ 265 (157). Protest both for non-acceptance and non-payment.
266 (158). Protest before maturity where acceptor insolvent.
267 (159). When protest dispensed with.
268 (160). Protest; where bill is lost, et cetera.

Sections 260 to 268 above are the sections of the New York Law.

Sections 152 to 160 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 152 to 160 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: As sections 3455 to 3463 in Arizona; as sections 151 to 159 in Illinois; as sections 159 to 167 in Kansas and Oregon; as 171 to 179 in Maryland; as 154 to 162 in Michigan; as 151 to 159 in Nebraska; as 3176p to 3176x in Ohio; as 160 to 168 in Rhode Island; as 1681-9 to 1681-17 in Wisconsin.

§ 260 (152). In what cases protest necessary. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance, is dishonored by a non-payment, it must be duly protested for non-payment.[1, 1a] If it is not so protested, the drawer and indorsers are discharged.[2a] Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

See text, § 178.

Cross sections: 213 (129), 189 (118).

1—This section construed: The drawer's liabilities in a bill of ex-

change are fixed by the law of the place where he draws it: Amswick v. Rogers, 189 N. Y. 252, 93 N. Y. Supp. 87, 82 N. E. 134.

As to meaning of the term "protest": Sherman v. Ecker, (N. Y. 1908), 109 N. Y. S. 678.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 51 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Phœnix Bank v. Hussey, 12 Pick. 483; Dennistown v. Stewart, 17 How. (U. S.) 606; Commercial Bank v. Varnum, 49 N. Y. 269; Holliday v. McDougall, 20 Wend. 81.

Protest indispensable: Joseph v. Soloman, 19 Fla. 623; Platt v. Drake, 1 Doug. (Mich.) 296.

2a—Drawer and indorsers discharged: Smith v. Curlee, 59 Ill. 221; Citizens' Savings Bank v. Hays, 96 Ky. 365, 29 S. W. 20; Ocean National Bank v. Williams, 102 Mass. 141; Smith v. Long, 40 Mich. 555; Gale v. Walsh, 5 T. R. 329.

§ 261 (153). Protest; how made. The protest must be annexed to the bill, or must contain a copy thereof,[1a] and must be under the hand [2a] and seal [3a] of the notary making it, and must specify:[1]

1. The time [4a] and place [5a] of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.[6a]

See text, § 175.

1—This section construed: London & River Plate Bank v. Carr, 54 Misc. R. 94, 105 N. Y. S. 679.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 51 (7).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

1a—Protest, copy thereof annexed to bill: Fulton v. MacCracken, 18 Md. 528.

2a—Notaries signature may be printed: Fulton v. MacCracken, 18 Md. 528; Bank of Cooperstown v. Woods, 28 N. Y. 561.

3a—As to seal: Pierce v. Indseth, 106 U. S. 546; Bank v. Gray, 2 Hill 227; Donegan v. Wood, 49 Ala. 251. But see Huffaker v. National Bank, 12 Bush 293; Barry v. Crowley, 4 Gill (Md.) 194.

4a—Date must be stated: Union National Bank v. Williams Milling Co., 117 Mich. 535; Skelton v. Dustin, 92 Ill. 49; Cayuga County Bank v. Hunt, 2 Hill 35.

As to time: Reynolds v. Appleman, 41 Md. 615.

5a—Place: Duckert v. Von Lilienthol, 11 Wis. 56; Burbank v. Beach, 15 Barb. 326; Seneca County Bank v. Neass, 5 Denio 329.

6a—The notice in general: Pierce v. Indseth, 106 U. S. 546; Porter v. Judson, 1 Gray 175; Coruth v. Walker, 8 Wis. 252; Browne v. Philadelphia Bank, 6 S. & R. 484; Townsley v. Sunwall, 2 Pet. 170; Holliday v. McDougall, 20 Wend. 81; Johnson v. Brown, 154 Miss. 105; Carter v. Burley, 9 N. H. 558; Berry v. Crowly, 4 Gill (Md.) 194; Legg v. Vinal, 165 Mass. 555; Rosson v. Carroll, 90 Tenn. 90; Weems v. Farmers' Bank, 15 Md. 231; Reier v. Strass, 54 Md. 278; Ricketts v. Pendleton, 14 Md. 320; Sumner v. Bowen, 2 Wis. 524; Duckert v. Von Lilienthal, 11 Wis. 56; Adams v. Wright, 14 Wis. 408; Sherer v. Easton Bank, 33 Pa. St. 134; Rosson v. Carroll, 90 Tenn. 90; Porter v. Judson, 1 Gray 175; Spann v. Boltzell, 1 Fla. 301; Terbell v. Jones, 15 Wis. 253; People's Bank v. Brooke, 31 Md. 7.

Statement as to demand alone: Musson v. Lake, 4 How. (U. S.) 262; Nott's Exr. v. Beard, 16 La. 308.

When protest insufficient: See Mason v. Kilcourse, 71 N. J. Law 472.

§ 262 (154). Protest; by whom made. Protest may be made by:[1]

1. A notary public; or,

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

See text, § 175.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 94.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

Presentation and demand must be made by the notary in person if there be no existing custom or usage on the subject: Commercial Bank v. Varnum, 49 N. Y. 269; Ocean Nat. Bank v. William, 102 Mass. 141; Sacrider v. Brown, 3 MacL. 481, Fed. Cas. No. 12,205; Carter v. Union Bank, 7 Humph. (Tenn.) 548; Cribbs v. Adams, 13 Gray 597. But see Todd v. Wil's Adm., 49 Ala. 266, 273.

Cashier if notary may protest: Dykman v. Northridge, 36 N. Y. Supp. 962, 153 N. Y. 662; Moreland's Assignee et al. v. Citizens' Savings Bank, 97 Ky. 211, 30 S. W. 19; Nelson v. First National Bank, 69 Fed. 798.

Who may act as notary: Nelson v. First National Bank, 69 Fed. Rep. 798; 29 U. S. App. 554; Moreland's Assignee v. Citizens' Savings Bank, 97 Ky. 211; Dykman v. Northridge, 1 App. Div. (N. Y.) 26.

§ 263 (155). Protest; when to be made. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date noting.[1]

See text, § 175.

Cross section: 267 (159).

1—This section construed: Amsinck v. Rogers, 103 App. Div. 428, 93 N. Y. S. 87.

Construing corresponding provision of the English Bills of Exchange Act: Secs. 51 (4), 93; 51 (4); McPherson v. Wright, 12 Sess. Cas. 942.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Leftley v. Mills, 4 T. R. 170; Cayuga Bank v. Hunt, 2 Hill 635; Dennistown v. Stewart, 58 U. S. (17 How.) 606.

§ 264 (156). Protest; where made. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable and no further presentment for payment to, or demand on, the drawee is necessary.[1]

See text, § 175.

1—Construing corresponding provision of the English Bills of Exchange Act: Secs. 51 (6) and 51 (6) (b).

§ 265 (157). Protest both for non-acceptance and non-payment. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.[1]

See text, § 175.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 51 (3).

§ 266 (158). Protest before maturity where acceptor insolvent. Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.[1]

See text, § 180.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 51 (5).

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: For better security is unnecessary: In re English Bank, 2 Chy. (1893) 438.

§ 267 (159). When protest dispensed with. Protest is dispensed with by any circumstances which would dispense with

notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.[1]

See text, § 179.

Cross sections: 180 (109), 186 (115), 188 (117).

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 51 (9).

§ 268 (160). Protest where bill is lost, et cetera. Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.[1]

See text, § 180.

1—This section construed: Aebi v. Bank of Evansville, 124 Wis. 73, 102 N. W. 329.

Construing corresponding provision of the English Bills of Exchange Act: Sec. 51 (8).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Hinsdale v. Miles, 5 Conn. 331; Kavanaugh v. Bank, 59 Mo. App. 540.

ARTICLE XIV.

ACCEPTANCE OF BILLS OF EXCHANGE FOR HONOR.

§ 280 (161). When bill may be accepted for honor.
281 (162). Acceptance for honor; how made.
282 (163). When deemed to be an acceptance for honor of the drawer.
283 (164). Liability of acceptor for honor.
284 (165). Agreement of acceptor for honor.
§ 285 (166). Maturity of bill payable after sight; accepted for honor.
286 (167). Protest of bill accepted for honor, et cetera.
287 (168). Presentment for payment to acceptor for honor; how made.
288 (169). When delay in making presentment is excused.
289 (170). Dishonor of bill by acceptor for honor.

Sections 280 to 289 above are the sections of the New York Law.

Sections 161 to 170 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 161 to 170 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found in the following sections in the following states and territories: As sections 3464 to 3473 in Arizona; as 160 to 169 in Illinois; as 168 to 177 in Kansas and Oregon; as 180 to 189 in Maryland; as 163 to 172 in Michigan; as 160 to 169 in Nebraska; as 3176y to 3177g in Ohio; as 169 to 178 in Rhode Island; as 1681-18 to 1681-27 in Wisconsin.

§ 280 (161). When bill may be accepted for honor. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn.

The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance

for honor for one party, there may be a further acceptance by a different person for the honor of another party.[1]

See text, § 93.

1—Construing corresponding provision of the English Bills of Exchange Act: See 1st par. 65 (1), 2nd par. 1st and 2nd Clause 65 (2).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: May v. Kelly, 27 Ala. 497; Konig v. Bayard, 1 Pet. (26 U. S.) 250.

§ 281 (162). Acceptance for honor; how made. An acceptanc for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.[1]

See text, § 93.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 65 (3).

§ 282 (163). When deemed to be an acceptance for honor of the drawer. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.[1]

See text, § 93.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 65 (3).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Baring v. Clark, 19 Pick. 220; Freeman v. Perot, 2 Wash. C. C. 485, Fed. Cas. No. 5087; Goodall v. Polhill, 1 C. B. 233.

§ 283 (164). Liability of acceptor for honor. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.[1]

See text, § 93.

1—This section construed: Huston v. Newgass, 234 Ill. 285 (84 N. E. 910).

Construing corresponding section of the English Bills of Exchange Act: Sec. 66 (2).

The following case either did not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Baring v. Clark, 19 Pick. 220.

§ 284 (165). Agreement of acceptor for honor. The acceptor for honor, by such acceptance engages that he will on due presentment pay the bill according to the terms of his accept-

ance, provided it shall not have been paid by the drawee, and provided also that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.[1]

See text, § 93.

This section construed: The acceptor of a bill of exchange becomes primarily liable for its payment, and is to be considered the principal debtor and this is true even if the acceptance was for the accommodation of the drawer: Huston v. Newgass, 234 Ill. 285, 84 N. E. 910.

Construing corresponding section of the English Bills of Exchange Act: Sec. 66 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Schofield v. Bayard, 3 Wend. 491; Phillips v. Im Thurr, L. R. 1C. P. 463, 14 L. T. (N. S.) 406; Williams v. Germain, 7 B. & C. 468; Wilkinson v. Johnson, 3 B. & C. 428; Hoare v. Cazenore, 16 East 391.

§ 285 (166). Maturity of bill payable after sight, accepted for honor. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.[1]

See text, § 93.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 65 (5).

§ 286 (167). Protest of bill accepted for honor, et cetera. Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.[1]

See text, § 93.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 67 (1).

§ 287 (168). Presentment for payment to acceptor for honor, how made. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred seventy-five.[1]

See text, § 93.

In the original New York act "section 104" instead of 175 by mistake.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 67 (2).

§ 288 (169). When delay in making presentment is excused. The provisions of section one hundred and forty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.[1]

See text, § 93.

In the original New York act, "section 81" instead of 141, by mistake.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 67 (3).

§ 289 (170). Dishonor of bill by acceptor for honor. When the bill is dishonored by the acceptor for honor, it must be protested for non-payment by him.[1]

See text, § 93.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 67 (4).

ARTICLE XV.

PAYMENT OF BILLS OF EXCHANGE FOR HONOR.

§ 300 (171). Who may make payment for honor.
301 (172). Payment for honor; how made.
302 (173). Declaration before payment for honor.
303 (174). Preference of parties offering to pay for honor.
§ 304 (175). Effect on subsequent parties where bill is paid for honor.
305 (176). Where holder refuses to receive payment *supra* protest.
306 (177). Rights of payer for honor.

Sections 300 to 306 above are the sections of the New York Law.

Sections 171 to 177 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 171 to 177 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: As sections 3474 to 3480 in Arizona; as 170 to 176 in Illinois; as 178 to 184 in Kansas and Oregon; as 190 to 196 in Maryland; as 173 to 179 in Michigan; as 170 to 176 in Nebraska; as 3177h to 3177n in Ohio; as 179 to 185 in Rhode Island; as 1681-28 to 1681-34 in Wisconsin.

§ 300 (171). Who may make payment for honor. Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.[1]

See text, § 183.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 68 (1).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Smith v. Sawyer, 55 Me. 141; Konig v. Bayard, 1 Pet. (26 U. S.) 250; Wood v. Pugh, 7 Ohio, pt. 2, 156, 164; Geralopulo v. Wieler, 10 C. B. 690, 20 L. J. C. P. 105; Deacon v. Stodhart, 2 Man. 2 Gr. 317; Vandewall v. Tyrrell, 1 M. & M. 87.

§ 301 (172). **Payment for honor; how made.** The payment for honor *supra* protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.[1]

See text, § 183.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 68 (3).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Konig v. Bayard, 1 Pet. 250; Gazzam v. Armstrong's Exr., 3 Dana (Ky.) 554; Wood v. Pugh, 7 Ohio, pt. 2, 156.

§ 302 (173). **Declaration before payment for honor.** The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.[1]

See text, § 183.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 68 (4).

§ 303 (174). **Preference of parties offering to pay for honor.** Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.[1]

See text, § 183.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 68 (2).

§ 304 (175). **Effect on subsequent parties where bill is paid for honor.** Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.[1]

See text, § 183.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 68 (5).

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Gazzam v. Armstrong's Exr., 3 Dana (Ky.) 554; McDowell v. Cook, 14 Miss. 420.

§ 305 (176). **Where holder refuses to receive payment supra protest.** Where the holder of a bill refuses to receive payment

supra protest, he loses his right of recourse against any party who would have been discharged by such payment.[1]

See text, § 183.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 68 (7).

§ 306 (177). **Rights of payer for honor.** The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.[1]

See text, § 183.

1—Construing corresponding section of the English Bills of Exchange Act: Sec. 68 (6).

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Such payee must be ready and make offer at time of payment: Denston v. Henderson, 13 Johns (N. Y.) 322.

ARTICLE XVI.

BILLS IN A SET.

§ 310 (178). Bills in sets constitute one bill.

311 (179). Rights of holders where different parts are negotiated.

312 (180). Liability of holder who indorses two or more parts of a set to different persons.

§ 313 (181). Acceptance of bills drawn in sets.

314 (182). Payment by acceptor of bills drawn in sets.

315 (183). Effect of discharging one of a set.

Sections 310 to 315 above are the sections of the New York Law.

Sections 178 to 183 above in parenthesis are the sections used by the commissioners.

The above sections correspond to sections 178 to 183 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Massachusetts, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: Sections 3481 to 3486 in Arizona; 177 to 182 in Illinois; 185 to 190 in Kansas and Oregon; 197 to 202 in Maryland; 180 to 185 in Michigan; 177 to 182 in Nebraska; 3177o to 3177t in Ohio; 186 to 191 in Rhode Island; 1681-35 to 1681-40 in Wisconsin.

§ 310 (178). Bills in sets constitute one bill. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.[1]

See text, § 60.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 71 (1), Bills of Exchange Act.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Durkin v. Cranston, 7 Johns 442; Downes v. Church, 13 Pet. (38 U. S.) 207; Walsh v. Blatchley, 6 Wis. 413; Ralli v. Dennistown, 6 Ex. 483, 20 L. J. Ex. 278; Holdsworth v. Hunter, 10 B. & C. 449; Wells v. Whitehead, 15 Wend. 527.

§ 311 (170). Rights of holders where different parts are negotiated. Where two or more parts of a set are negotiated

to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.[1]

See text, § 60.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 71 (3), Bills of Exchange Act.

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Walsh v. Blatchley, 6 Wis. 422.

§ 312 (180). Liability of holder who indorses two or more parts of a set to different persons. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.[1]

See text, § 60.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 71 (2), Bills of Exchange Act.

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Holdsworth v. Hunter, 10 C. B. 449.

§ 313 (181). Acceptance of bills drawn in sets. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.[1]

See text, §§ 60, 86.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 71 (4), Bills of Exchange Act.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Holdsworth v. Hunter, 10 C. B. 449; Donner & Co. v. Church, 15 Peters 205; Walsh v. Blatchley, 6 Wis. 422, 425; Bank v. Neal, 22 How. (U. S.) 96.

§ 314 (182). Payment by acceptor of bills drawn in sets. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.[1]

See text, §§ 122, 60.

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 71 (5) Bills of Exchange Act.

The following case either does not cite the Negotiable Instruments Law or was decided previous to the enactment of it: Holdsworth v. Hunter, 10 B. & C. 449.

§ 315 (183). Effect of discharging one of a set. Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.[1]

See text, §§ 122, 60.

The Wisconsin act inserts an article, not found in the other acts, entitled "Damages on Bills," as follows:

"§ 1682. Whenever any bill of exchange drawn or indorsed within this state and payable without the limits of the United States shall be duly protested for non-acceptance or non-payment, the party liable for the contents of such bill shall, on due notice and demand thereof, pay the same at the current rate of exchange at the time of the demand and damages at the rate of five per cent upon the contents thereof, together with interest on the said contents, to be computed from the date of the protest; and said amount of contents, damages and interest shall be in full of all damages, charges and expenses.

"§ 1683. If any bill of exchange drawn upon any person or corporation out of this state, but within some state or territory of the United States, for the payment of money shall be duly presented for acceptance or payment and protested for non-acceptance or non-payment, the drawer or indorser thereof, due notice being given of such non-acceptance or non-payment, shall pay said bill with legal interest, according to its tenor and five per cent damages, together with costs and charges of protest."

1—Construing corresponding provision of the English Bills of Exchange Act: Sec. 71 (6), Bills of Exchange Act.

See Holdsworth & Hunter, 10 B. & C. 449.

ARTICLE XVII.

PROMISSORY NOTES AND CHECKS.

§ 320 (184). Promissory note defined.

321 (185). Check defined.

322 (186). Within what time a check must be presented.

§ 323 (187). Certification of check; effect of.

324 (188). Effect where holder of check procures it to be certified.

325 (189). When check operates as an assignment.

Sections 320 to 325 above are the sections of the New York law.

Sections 184 to 189 above in parenthesis are the sections used by the commission.

The above sections correspond to sections 184 to 189 in the following states and territories: Alabama, Colorado, Connecticut, District of Columbia, Florida, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Tennessee, Utah, Virginia, Washington, West Virginia and Wyoming.

They are found as the following sections in the following states and territories: As section 3487 in Arizona; as 183 to 188 in Illinois; as 191 to 196 in Kansas and Oregon; as 203 to 208 in Maryland; as 186 to 191 in Michigan; as 183 to 188 in Nebraska; as 3177u to 3177z in Ohio; as 192 to 197 in Rhode Island; as 1684 to 1684-5 in Wisconsin.

§ 320 (184). Promissory note defined. A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money, to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.[1]

See text, § 38.

This section construed: Young v. American Bank, (1) 44 N. Y. Misc. 305, 89 N. Y. S. 913; Young v. American Bank, (2) 44 N. Y. Misc. 308, 89 N. Y. S. 915; Sherman v. Goodwin (Ariz.), 89 Pac. 517; Bannister v. Kintz (Fla.), 42 So. 886; Alexander v. Hazelrigg (Ky.), 97 S. W. 353; Hoffman v. Planters' National Bank, 99 Va. 480, 39 S. E. 134; Hickoh v. Bunting, 92 App. Div. 167, 86 N. Y. S. 1059; Union Stock Yards National Bank v. Bolan (Idaho), 93 Pac. 508; National Exchange Bank v. Lubrano (R. I.), 68 Atl. Rep. 944; Yarwood v. Trusts & Guar-

antee Co. (Ltd.), 94 App Div. 47, 87 N. Y. S. 947; Deyo v. Thompson, 53 App. Div. 9, 65 N. Y. S. 459.

A bill of exchange payable to the order of the drawer does not come into existence as such until it is delivered as well as indorsed by the payee: Struffer v. Curtis, 85 N. E. 180. *Mass., 1908.*

The complaint or a note payable to the maker must allege its indorsement by him: Edelman v. Rams, 109 N. Y. S. 816.

A note payable to the order of the maker is not valid until after negotiation: Roach v. Sanborn Land Co., 115 N. W. 1102. *Wis., 1908.*

Construing corresponding sections of the English Bills of Exchange Act: See 1st par. 83 (1); last par. 83 (2), 83 (1); Kirkwood v. Carroll (1903), 1 K. B. 531; Yates v. Evans, 61 L. J. Q. B. 446; Kirkwood v. Smith (1896), 1 Q. B. 582 overruled.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

In a suit on note payable to makers' order complaint must allege indorsement by maker: Simon v. Mintz, 51 Misc. Rep. 670, 101 N. Y. S. 86.

In legal effect certificates of deposit payable to order or to bearer are negotiable promissory notes: Zander v. N. Y. Security & Trust Co., 81 N. Y. Supp. 1151; Trustees v. Lewis, 34 Fla. 424; Beardsley v. Webber, 104 Mich. 88; Birch v. Fisher, 51 Mich. 36; Kirkwood v. First National Bank, 40 Neb. 484; Curran v. Witter, 68 Wis. 16.

So are interest or coupon notes: Boyer v. Chandler, 160 Ill. 394.

Payable to maker's own order: Hoffman v. Planters' National Bank, 99 Va. 480, 39 S. E. 134; Peninsular Savings Bank v. Hosie, 112 Mich. 351.

§ 321 (185). Check defined. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.[1]

See text, § 200.

Cross sections: section 2 (191) "bank."

1—This section construed: State Bank v. Weiss, 42 N. Y. Misc. 93, 91 N. Y. S. 276; Schlesinger v. Kurzrok, 47 Misc. Rep. 634, 94 N. Y. S. 442; Wisner v. First Nat. Bank (Pa.), 68 Atl. 955; Amsinck v. Rogers, 93 N. Y. Supp. 87; B. & O. Ry. Co. v. First Nat. Bank, 102 Va. 753, 47 S. E. 837; Van Buskirk v. State Bank, 35 Col. 142, 83 Pac. 778; Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 522; Unaka Nat. Bank v. Butter, 113 Tenn. 574, 83 S. W. 655; Columbia Banking Co. v. Bowen (Wis.), 114 N. W. 451; Wedge Minn. Co. v. Denver Nat. Bank, 19 Colo. App. 182; Boswell v. Citizen's Savings Bank (Ky.), 96 S. W. 797.

Construing corresponding sections of the English Bills of Exchange Act: Sec. 73 (the word "banker" appears instead of "bank" as above); Bavins v. London & S. W. Bank (1900), 1 Q. B. 270; Nathan v. Ogdens,

21 T. L. R. 775; McLean v. Clydesdale Banking Co., 9 App. Cas. 95; Gaden v. Newfoundland Saving Bank (1899), A. C. 281, Privy Council.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it:

A check is always drawn on a bank or banker: In re Brown, 2 Story's Rep. 502; Buel v. Bank of Krasson, 123 U. S. 105; Rodgers v. Durant, 140 U. S. 298; Espy v. Bank of Cincinnati, 18 Wall. 620; Merchants Bank v. State Bank, 10 Wall. 604; Cruger v. Armstrong, 3 Johns. 5; Murry v. Judah, 6 Cow. 484; Harken v. Anderson, 21 Wend. 373; Chapman v. White, 6 N. Y. 412; Heins v. Clark, 3 N. Y. 93; Ridgely Bank v. Patton, 109 Ill. 484; People v. Kemp, 76 Mich. 410; Harrison v. Nicollet Nat. Bank, 41 Minn. 489; Northwestern Coal Co. v. Bowman, 69 Ia. 152; Planters Bank v. Keese, 7 Heisk. 200; Blair v. Wilson, 28 Gratt 170; Dodd v. Jette, 10 Oregon 31; Hopkinson v. Foster, T. R. 18 Eq. 74.

Law applicable to a bill of exchange payable on demand applies to a check except when otherwise provided: Ames v. Meriam, 98 Mass. 294; Bill v. Stewart, 156 Mass. 508; Herker v. Anderson, 21 Wend. 372; Dolph v. Rice, 18 Wis. 397; Wittich v. First Nat. Bank of Pensacola, 20 Fla. 843; Industrial Bank v. Bowers, 165 Ill. 70; Andrew v. Blackly, 11 Ohio St. 89; First National Bank v. Linn, etc., 30 Ore. 296; Carew v. Duckworth, L. R. 4 Exch. 313.

As to difference when authority to draw one only, see Forster v. Macreth, L. R. 2 Exch. 163.

On the question as to whether a draft not payable on demand is a check, see the following cases that it is not a check: Bowen v. Newell, 8 N. Y. 190, 13 N. Y. 390; Minturn v. Fisher, 4 Cal. 36; Morrison v. Bailey, 5 Ohio St. 13; Georgia Natl. Bank v. Henderson, 46 Ga. 496; Harrison v. Nicollet Natl. Bank, 41 Minn. 488; Ivory v. Bank of the State, 36 Mo. 475. CONTRA: Champion v. Gordon, 70 Pa. St. 474; Westminster Bank v. Wheaton, 4 R. I. 30; In re Brown, 2 Story 502.

This distinction is no longer of any practical importance. An instrument is not a check unless drawn on a bank: Amsinch v. Rogers, 103 App. Div. 428, 93 N. Y. S. 87, affirmed 189 N. Y. 252, 82 N. E. 134.

§ 322 (186). Within what time a check must be presented. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.[1]

See text, § 202.

Cross section: § 4 (193).

1—This section construed: Moskowitz v. Dentsch, 46 Misc. 603, 92 N. Y. S. 721; Mfg. Co. v. Summers, 143 N. C. 102, 55 S. E. 522; Gordon v. Levine, 194 Mass. 418, 80 N. E. 505; Mottoch v. Scheneman (Ore.), 93 Pac. 823; Aebi v. Bank of Evansville, 124 Wis. 73, 102 N. W. 329; Citizens Bank v. First Natl. Bank (Iowa), 113 N. W. 481. See also Plover Sav. Bank v. Moodie (Iowa), 110 N. W. 29.

Where a check drawn on Oct. 11, 1907, was received through the mail on Oct. 12, a "reasonable time" for presentment expired at the close of business on Oct. 13: Dehoust v. Lewis, 112 N. Y. S. 559.

Delay in the presentment of a check will relieve the drawer from liability, when he has been injured by the delay; Kramer v. Grant, 111 N. Y. S. 709.

Construing corresponding section of the English Bills of Exchange Act: Sec. 74 (1); Wheeler v. Young, 13 T. L. R. 468.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Cox v. Citizen's State Bank, 73 Kans. 789; First Natl. Bank of Portland v. Lime Co. Natl. Bank, 30 Ore. 296; Industrial Bank of Chicago v. Bowers, 165 Ill. 70.

As to delay see: Industrial Trust etc. Co. v. Weakley, 103 Ala. 458; Comer v. Dufour, 95 Ga. 376; Holmes v. Rose, 62 Mich. 199; Haggerty v. Baldwin, 131 Mich. 187; Western etc. Co. v. Sadilek, 50 Neb. 105; First Natl. Bank of Wyoming v. Miller, 43 Neb. 791; Gregg v. Beam, 69 Vt. 22; Grange v. Reigh, 93 Wis. 552; Gifford v. Haskill, 88 Wis. 538.

Presentment in due form: First Natl. Bank v. Buckharmon Bank, 80 Md. 475; Lou v. Fox, 171 Pa. St. 68; Willis v. Findley, 173 Pa. St. 28; Bill v. Alexander, 21 Gratt 1; Purcell v. Ellemong, 22 Gratt 739; Floyd v. Osborne, 92 Wis. 93.

As to indorser's liability see: Carroll v. Swift, 128 N. Y. 19, 27 N. E. 763; First National Bank v. Miller, 43 Neb. 791.

As to reasonable time for presentment: Grange v. Reigh, 93 Wis. 552; Farmers' Nat. Bank v. Dreyfus, 82 Mo. App. 399; First National Bank v. Miller, 43 Neb. 791; Kershaw v. Lodd, 34 Ore. 375; Nomliu v. Simpson, 105 Iowa 125.

Authority of a banker to pay a check may be determined by notice of death: Raesser v. National Exchange Bank, 112 Wis. 591; National Commercial Bank v. Miller, 77 Ala. 168.

§ 323 (187). Certification of check; effect of. Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.[1]

See text, § 203.

1—This section construed: Schlesinger v. Kurzrok, 47 Misc. R. 634, 94 N. Y. S. 442; Poess v. Twelfth Ward Bank, 43 Misc. R. 45, 86 N. Y. S. 857; Purse & Dyer v. State Nat. Bank, 114 Tenn. 693; Unaka Nat. Bank v. Butter, 113 Tenn. 574, 83 S. W. 655; Elliot v. Worcester Trust Co., 189 Mass. 542, 75 N. E. 944; Mener v. Phoenix Nat. Bank, 94 App. Div. 331, 88 N. Y. S. 83.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Merchants Bank v. State Bank, 10 Wall. 604; Cooke v. State Nat. Bank, 52 N. Y. 96; Farmers & Mechanics Bank v. Butchers & Drovers' Bank, 16 N. Y. 125; Drovers' National Bank v. Provision Co., 117 Ill. 106; Van Bus-

kirk v. State Bank, 35 Colo. 142; First Nat. Bank v. Northwestern Nat. Bank, 152 Ill. 296; Merchants Bank v. State Bank, 10 Wall. 648; Union Trust Co. v. Preston Nat. Bank (Mich.), 99 N. W. 399.

§ 324 (188). Effect where the holder of check procures it to be certified. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.[1]

See text, § 203.

1—This section construed: Mener v. Phoenix Nat. Bank, 94 App. Div. 331, 88 N. Y. S. 83; Schlesinger v. Kurzrok, 47 Misc. R. 634, 94 N. Y. S. 442; St. Regis Paper Co. v. Tonawanda Co., 107 App. Div. 90, 94 N. Y. S. 946; Cullman v. Union Surety & Guaranty Co., 79 App. Div. 409, 80 N. Y. S. 58; Dunn v. Whalen, 120 App. Div. 90, 94 N. Y. S. 588.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Meridian Natl. Bank v. First Natl. Bank, 7 Ind. App. 322; Metropolitan Bank v. Jones, 137 Ill. 634, 27 N. E. 533; Minot v. Russ, 156 Mass. 458; First Natl. Bank v. Teach, 52 N. Y. 350; Bank v. Carter, 88 Tenn. 279; Born v. First Natl. Bank, 123 Ind. 78; Cincinnati Oyster & Fish Co. v. Nat. Lafayette Bank, 51 Ohio St. 106; First Nat. Bank v. Currie, 147 Mich. 72; Brown v. Leckie, 43 Ill. 497; First National Bank v. Whitman, 94 U. S. 343; Larson v. Breene, 12 Colo. 480; Mutual Nat. Bank v. Rotge, 28 La. Ann. 933; National Commercial Bank v. Miller, 77 Ala. 168.

If drawee secures certification before delivery then he is not discharged: Oyster & Fish Co. v. Bank, 51 Ohio St. 106, 36 N. E. 833; Randolph Nat. Bank v. Hornblower, 160 Mass. 401, 35 N. E. 850.

§ 325 (189). When check operates as an assignment. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.[1]

See text, § 207.

1—This section construed: Tonier v. State Savings Bank, 149 Mich. 483, 112 N. W. 1119; Mener v. Phoenix Nat. Bank, 94 App. Div. 331, 88 N. Y. S. 83; Schlesinger v. Kurzrok, 47 Misc. R. 634, 94 N. Y. S. 442; Raesser v. Nat. Exch. Bank, 112 Wis. 591, 88 N. W. 618, Perse & Dwyer v. State Nat. Bank, 114 Tenn. 693, 88 S. W. 172; Unaka Bank v. Butler, 113 Tenn. 574, 83 S. W. 655; Poess v. Twelfth Ward Bank, 43 Misc. Rep. 45, 86 N. Y. S. 857; National Bank v. Benall, 70 N. J. L. 757, 58 Atl. 189; B. & O. Ry. Co. v. First Nat. Bank, 102 Va. 753, 47 S. E. 837; Van Buskirk v. State Bank, 35 Colo. 142, 83 Pac. 778; Tibby Bros. Glass Co. v. Farmers' & Mechanics' Bank (Pa.), 69 A. Rep. 280.

Construing corresponding section of the English Bills of Exchange

Act: Sec. 53 (1) 73; Bevins v. London S. W. Bank (1900), 1 Q. B. 270; Nathan v. Ogdens, 21 T. L. R. 775; McLean v. Clydesdale Banking Co., 9 App. Cas. 95; Gaden v. Newfoundland Savings Bank (1899), A. C. 281 Privy Council.

The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Tibby Bros. Glass Co. v. Farmers Mechanics Bank (Pa.), 69 Atl. Rep. 280; St. H. & S. F. Ry. Co. v. Johnston, 133 U. S. 566; First Natl. Bank v. Whitman, 94 U. S. 343; Florence Mills Co. v. Brown, 124 U. S. 385; Bank v. Schuyler, 120 U. S. 511; Bank v. Millard, 10 Wall. 152; Boetcher v. Colonade Nat. Bank, 15 Colo. 16; Hopkins v. Foster, L. R. 18 Eq. 74; Attorney-General v. Continental Life Ins. Co., 71 N. Y. 325; First Nat. Bank of Union Mills v. Clark, 134 N. Y. 368; O'Connor v. Mechanics Bank, 124 N. Y. 324; Covert v. Rhodes, 48 Ohio St. 66; Cincinnati H. & D. Ry. Co. v. Metropolitan Nat. Bank, 54 Ohio State 60; Magim v. Dollen Savings Bank, 131 Pa. St. 362; Saylor v. Bushong, 100 Pa. St. 27; Pickle v. People's Nat. Bank, 88 Tenn. 380.

Mere delivery of check does not constitute an assignment of fund but parties can make such an assignment by an agreement, oral or otherwise, in addition to giving of the check: Fourth Street Natl. Bank v. Yardley, 165 U. S. 634; Thropp Grain Cleaner Co. v. Smith, 110 N. Y. 83; First National Bank v. Cloak, 134 N. Y. 368.

On liability of bank to drawer for refusal to honor when drawn, see: Bank of Commerce v. Goos, 39 Neb. 437; Schaffner v. Ehrman, 139 Ill. 109; Patterson v. Marine Natl. Bank, 130 Pa. St. 419; Atlanta National Bank v. Davis, 96 Ga. 334.

ARTICLE XVIII.

NOTES GIVEN FOR A PATENT RIGHT AND FOR A SPECULATIVE CONSIDERATION.

§ 330. Negotiable instruments given for patent rights.[1]
331. Negotiable instruments given for a speculative consideration.
332. How negotiable bonds are made non-negotiable.

1—Ohio and New York have these provisions.

§ 330. Negotiable instruments given for patent rights. A promissory note or other negotiable instrument, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented, must contain the words "given for a patent right" prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder; but this section does not apply to a negotiable instrument given solely for the purchase price or the use of a patented article.[1]

See text, § 51.

1—Laws of N. Y. 1877, ch. 65, Sec. 1; Rev. Stat. Ohio, 1880, Sec. 3178; 66 v. 93, Sec. 1 (S. & S. 510). The section not in contravention of the Constitution of the United States. Brickhill v. Randall, 102 Ind. 528; New v. Walker, 108 Ind. 365; Herdie v. Roessler, 109 N. Y. 127; Tod v. Wich, 36 Ohio St. 370; Haskill v. Jones, 86 Pa. St. 173; Shires v. Commonwealth, 120 Pa. St. 368.

In case the note does not contain the statement required by this section, see: New v. Walker, 108 Ind. 365; Kniss v. Holbrook, 16 Ind. App. 229; Harmon v. Hagerty, 88 Tenn. 705.

§ 331. Negotiable instruments for a speculative consideration. If the consideration of a promissory note or other negotiable instrument consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time, in the locality, or of the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase

or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, the words, "given for a speculative consideration," or other words clearly showing the nature of the consideration, must be prominently and legibly written or printed on the face of such note or instrument above the signature thereof; and such note or instrument, in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder.[1]

See text, § 136.

Cross section: Sec. 96 (57).

1—The following cases either do not cite the Negotiable Instruments Law or were decided previous to the enactment of it: Smiggle v. Herman, 131 Wis. 379; Laws of N. Y. 1874, ch. 262, Sec. 1.

§ 332. How negotiable bonds are made non-negotiable. The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this state, but not registered in pursuance of any state law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

See text, § 214.

The Kansas, New York and Ohio acts contain this section.

Nebraska has the following section: "Sec. 196. Note given for patent right, how to be written, et cetera:

"A promissory note or other negotiable instrument, the consideration for which consists, in whole or in part, of the right to make, use or vend a patented invention, or an invention claimed to be patented, shall have written or printed prominently and legibly across the face thereof, and above the signature thereto, the words 'Given for a patent right,' such instrument in the hands of any purchaser, or holder, shall be subject to the same defenses as it would be in the hands of the original owner or holder; any person who purchases or becomes the holder of a promissory note, or other negotiable instrument, knowing it to have been given for the consideration aforesaid, shall hold the same subject to such defenses although the words 'given for a patent right' are not written or printed upon its face."

Laws of N. Y., 1871, ch. 81; Laws of N. Y., 1873, ch. 595.

APPENDIX A.

Tabulated Laws of the States and Territories of the United States as to some features of the laws of Negotiable Instruments.

TABLE I.

Table showing in what states and territories the Uniform Negotiable Instruments Law has been adopted and in what it has not; showing by states and territories whether or not Days of Grace are allowed on sight, on demand and on time paper; showing the law as to Presentment when instrument matures or falls due on Sunday or a Holiday; and setting out the legal Rate of Interest, the Limit of Interest under Contract and the Penalty for Usury in the various jurisdictions of the United States.

State.	Is Uniform Neg. Inst. Law in force.	DAYS OF GRACE.			If instrument falls due or matures on Sunday or a Holiday is presentment to be made on preceding or succeeding business day.	INTEREST.		Penalty for usury.
		Sight paper.	Demand paper.	Time paper.		Legal rate.	Limit under contract.	
1. Alabama	Yes	No	No	No	Next succeeding day	8	8	Forfeiture of all interest
2. Alaska	No	No	No	Yes	Preceding day	8	10	Forfeiture of debt to school fund
3. Arizona	Yes	No	No	No	Next succeeding day	6	No limit	No penalty
4. Arkansas	No	Yes	Yes	Yes	Preceding day	6	10	Forfeiture of contract
5. California	No	No	No	No	Next succeeding day	7	No limit	No penalty
6. Colorado	Yes	No	No	No	Next succeeding day	8	No limit	No penalty
7. Connecticut	Yes	No	No	No	Next succeeding day	6	15	Forfeiture principal and interest. Fine and imprisonment
8. Delaware	No	No	No	No	Preceding day	6	6	Forfeiture principal and interest
9. Dist. of Col.	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of all interest
10. Florida	Yes	No	No	No	Next succeeding day	8	10	Forfeiture of all interest
11. Georgia	No	No	No	No	Preceding day	7	8	Forfeiture of excessive interest
12. Idaho	Yes	No	No	No	Next succeeding day	7	12	Forfeiture of 10% annually of principal
13. Illinois	Yes	No	No	No	Next succeeding day	5	7	Forfeiture of all interest
14. Indiana	No	No	No	No	Next succeeding day	6	8	Forfeiture of all interest over 6%
15. Iowa	Yes	No	No	No	Next succeeding day	6	8	Forfeiture of interest and costs of suit
16. Kansas	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of double the usury
17. Kentucky	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of excessive interest
18. Louisiana	Yes	No	No	No	Next succeeding day	5	8	Forfeiture of all interest
19. Maine	No	Yes	No	No	Next succeeding day	6	No limit	No usury law except as to loans for less than $200. secured by chattel mortgage
20. Maryland	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of excessive interest
21. Massachusetts	Yes	Yes	No	No	Next succeeding day	6	No limit	On loans of less than $1,000 only 18% is recoverable Not more than $5.00 costs
22. Michigan	Yes	No	No	No	Next succeeding day	5	7	Forfeiture of all interest.
23. Minnesota	No	Yes	No	No	Next succeeding day	6	10	Forfeiture of debt and interest
24. Mississippi	No	Yes	Yes	Yes	Preceding day	6	10	Forfeiture of interest
25 Missouri	Yes	No	No	No	Next succeeding day	6	8	Forfeiture of excessive interest

APPENDIX A.

State.	Is Uniform Neg. Inst. Law in force.	DAYS OF GRACE.			If instrument falls due or matures on Sunday or a Holiday is presentment to be made on preceding or succeeding business day.	INTEREST.		Penalty for usury.
		Sight paper.	Demand paper.	Time paper.		Legal rate.	Limit under contract.	
26. Montana	Yes	No	No	No	Next succeeding day	8	No limit	No penalty
27. Nebraska	Yes	No	No	No	Next succeeding day	7	10	Forfeiture of all interest
28. Nevada	Yes	No	No	No	Next succeeding day	7	No limit	No penalty
29. N. Hampshire	Yes‖	Yes	No	No	Next succeeding day	6	6	Forfeiture of three times excess of interest
30. New Jersey	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of all interest
31. New Mexico	Yes	Yes	Yes	Yes	Next succeeding day	6	12	Forfeiture double the usury fine
32. New York	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of debt and interest. Misdemeanor.
33. N. Carolina	Yes	Yes	No	No	Next succeeding day	6	6	Forfeiture of all interest. Double amount paid may be recovered
34. N. Dakota	Yes	No	No	No	Next succeeding day	7	12	Forfeiture of all interest
35. Ohio	Yes	No	No	No	Next succeeding day	6	8	Forfeiture of excess over 6%
36. Oklahoma	Yes	Yes	Yes	Yes	Next succeeding day	6	10	Forfeiture of all interest
37. Oregon	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of principal and interest.
38. Pennsylvania	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
39. Rhode Island	Yes	Yes	No	No	Next succeeding day	6	No limit	No penalty
40. S. Carolina	No	Yes	No	No	Next succeeding day	7	8	Forfeiture of interest. Twice amount of interest paid may be recovered by debtor
41. S. Dakota	No	Yes	Yes	Yes	Next succeeding day	7	12	Forfeiture of interest. Misdemeanor
42. Tennessee	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
43. Texas	No	Yes	No	Yes	Preceding day	6	10	Forfeiture of all interest Double amount of interest paid recoverable
44. Utah	Yes	No	No	No	Next succeeding day	8	12	Forfeiture of principal and interest
45. Vermont	No	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
46. Virginia	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of all interest
47. Washington	Yes	No	No	No	Next succeeding day	6	12	Forfeiture of accrued interest. Twice amount paid recoverable
48. West Virginia	Yes	No	No	No	Next succeeding day	6	6	Forfeiture of excess interest
49. Wisconsin	Yes	No	No	No	Next succeeding day	6	10	Forfeiture of all interest. Treble paid recoverable
50. Wyoming	Yes	No	No	No	Next succeeding day	8	12	Forfeiture of all interest

‖ After January 1, 1910.

TABLE II.

Table showing by states and territories the period of the Statute of Limitations on Notes and also on Judgments in Courts of Record; showing whether or not Agreements to Pay Attorney's Fees in case of Default are Enforcible and whether or not such agreements render notes non-negotiable; showing also whether or not Judgment Notes are used; setting out whether the Contracts of a Married Woman in business are enforcible at law as they would be if she were unmarried; and also setting out the Jurisdiction of Justices of the Peace as to Amount on Negotiable Instruments.

States.	STATUTE OF LIMITATIONS.		Is an agreement to pay attorney's fees in case of default enforcible?	Does such an agreement render the note non-negotiable?	Are judgment notes used?	Are the contracts of a married woman in business enforcible at law as they would be if she were unmarried?	Jurisdiction of Justice of the Peace as to amount.
	Notes. (years.)	Judgments. (Courts of record.)					
1. Alabama	6; 10 if under seal	20	Yes	No	No	Yes	$100.00
2. Alaska	6; 10 if under seal	10	.....	.....	No	Yes	.....
3. Arizona	4	6	Yes	No	Yes	Yes, but wife cannot dispose of common property	$300.00 and interest
4. Arkansas	5	10; lien expires 3 yrs.	No	No	No	Yes	$300.00 and interest
5. California	2; 4 if executed in state	5	Yes	Yes	.....	Yes	$299.99 and interest
6. Colorado	6	20	Yes	No	Yes	Yes	$300.00
7. Connecticut	6; non-negotiable 17	No limit	Yes	No	No	Yes, if for the benefit of herself, her family or her sole estate	$100.00
8. Delaware	6	10	Yes, if sum is certain	No	No	Yes	$200.00 and interest
9. District of Col.	3	12	Yes	No	Yes	Yes	$300.00
10. Florida	5	20	Yes	No	Permitted but not in use	Yes, upon leave being granted by the Circuit Court her separate property liable in equity	$100.00
11. Georgia	6; if under seal 20	7; foreign, 5 yrs.	Yes, if deft. is given 10 days' notice of intention to sue	No	.....	Yes, but cannot be held liable as surety or for debts of husband	$100.00 and interest
12. Idaho	5	6	Yes	No	.....	Yes	$300.00
13. Illinois	10	20; foreign, 5 yrs.	Yes, if fees are fixed and certain	No, if amount is fixed	Yes	Yes, but cannot enter partnership without her husband's consent	$200.00. No J. P. in Chicago. Municipal Court $1000.00
14. Indiana	10	20; but no lien after 10	Yes, if unconditional	No	No	Yes, but cannot become surety for anyone. Husband must join in conveyances and mortgages	$200.00. By confession $300.00
15. Iowa	10	20	Yes, if attorn'y files statutory affidavit	No	Yes	Yes	$100.00
16. Kansas	5	May be kept alive by issuing execution every 5 yrs.	No	No	.....	Yes	$300.00

States.	STATUTE OF LIMITATIONS.		Is an agreement to pay attorney's fees in case of default enforcible?	Does such an agreement render the note non-negotiable?	Are judgment notes used?	Are the contracts of a married woman in business enforcible at law as they would be if she were unmarried?	Jurisdiction of Justice of the Peace as to amount.
	Notes. (years.)	Judgments. (Courts of record.)					
17. Kentucky	15, notes 5, acceptances	15	No; enforcible if valid in state where made	No	No	Yes	$100.00 and interest
18. Louisiana	5	10	Yes	No	.....	Yes	$100.00
19. Maine	6; if notes are witnessed, 20	20	No	Yes	No	Yes, except in some partnership contracts	$20.00
20. Maryland	3; 12, if sealed	12	Yes	No	Yes	Yes	$100.00
21. Massachusetts	6; attested notes, 20	20	Yes	No	Yes	Yes, but statute does not authorize contracts between husband and wife	$300.00
22. Michigan	6; under seal, 10	10	Yes	No	No	Yes, but cannot become surety for or form partnership with her husband	$300.00
23. Minnesota	6	10	Yes	Yes	No	Yes, husband must join in the conveyance of real property	$100.00
24. Mississippi	6	7	Yes	No	No	Yes	$200.00 and interest
25. Missouri	10	10; if dated prior to 1895, 20	Yes	No	No	Yes	$250.00
26. Montana	8	10	Yes	No	.....	Yes	$300.00
27. Nebraska	5	10; foreign, 5	No	No	No	Yes	$200.00
28. Nevada	6	6	Yes	No	.....	Yes	$300.00 and interest
29. N. Hampshire	6; secured by mortgage, 20	20	Unsettled*	Unsettled†	No	Yes, but she cannot become surety for her husband	$13.3333
30. New Jersey	6	20	Uncertain	No	Allowed but not in use	Yes, but cannot become surety, accommodation indorser, or guarantor unless she or her estate derives benefit from the contract	$200.00
31. New Mexico	6	7	Yes	No	Yes, condition'l	Yes, husband must join in the transfer of real estate	$100.00
32. New York	6; under seal, 20	20	Yes	No	Yes	Yes	$200.00
33. North Carolina	3; under seal, 10	10	No	No	Yes	Yes, if made a free dealer	$200.00 and interest

*Yes after Jan. 1, 1910. †No after Jan. 1, 1910.

State.	STATUTE OF LIMITATIONS.		Is an agreement to pay attorney's fees in case of default enforcible?	Does such an agreement render the note non-negotiable?	Are judgment notes used?	Are the contracts of a married woman in business enforcible at law as they would be if she were unmarried?	Jurisdiction of Justice of the Peace as to amount.
	Notes. (years.)	Judgments. (Courts of record.)					
34. North Dakota	6	10	No	No	Yes	Yes	$200.00
35. Ohio	15	5 yr. lien kept alive indefinitely by execution every 5 yr.	No	No	Yes	Yes	$300.00
36. Oklahoma	5	5; may be renewed every 5 yr.	Yes	Yes	Yes	Yes	$200.00
37. Oregon	6	10	Yes, if reasonable fee is provided; no, if specific % is mentioned	No	No	Yes	$250.00
38. Pennsylvania	6	20	Yes	No	Yes	Yes, but she cannot become surety bail, endorser or grantor	$300.00 and interest
39. Rhode Island	6	20	Yes	No	Yes	Yes	$500.00
40. South Carolina	6	10	Yes	No	No	Yes, but she cannot become surety, grantor or partner	$100.00
41. South Dakota	6; under seal, 20	20; foreign, 10	No	No	No	Yes	$100.00
42. Tennessee	6	10	Yes	No	Yes	Yes	$1000 against maker and indorser if demand & notice waived, otherwise $500.00
43. Texas	4	10	Yes	No	No	No	$200.00
44. Utah	6	8	Yes	No	Yes	Yes	$299.99
45. Vermont	6; on witnessed note, 14	8	Unsettled	Unsettled	No	Yes, but cannot be surety for her husband	$200.00
46. Virginia	5; under seal, 10	20; if execution issued & returned, foreign, 10 yrs.	Unsettled	No	Yes	Yes	$100.00
47. Washington	6	6	Yes, for a reasonable fee	No	Yes	Yes, but she cannot become partner with her husband	$100.00
48. West Virginia	10	10	Yes, subject to approval of court	No	No	Yes	$300.00 and interest
49. Wisconsin	6; under seal, 20 if executed in state	20 yrs. foreign, 10	Yes	No	Yes, conditional	Yes	$200.00 and confess. up to $300.00
50. Wyoming	5	5	Yes	No	Yes	Yes	$200.00

APPENDIX B.

DIGEST OF LAW IN JURISDICTIONS WHERE NEGOTIABLE INSTRUMENTS LAW NOT ADOPTED.

ARRANGED ALPHABETICALLY BY STATES.

Below is given a brief digest of some of the peculiar requirements as to Negotiable Instruments in all those states which have not adopted the Negotiable Instruments Law.

ARKANSAS.

To recover the statutory damages the bill of exchange must be expressed to be for value received.[1]

1—Ark. Statutes (1904) chap. 14, Secs. 502 and 503.

No law requires the instrument to be paid at a bank, or any other fixed place.[2]

2—Craig. v. Price, 23 Ark. 633. Not necessary, it is payable at the place of residence of the drawee unless otherwise stipulated.

Note made on Sunday is invalid.[3]

3—Trieber v. Com. Bank, 31 Ark. 118. If executed Sunday but dated Monday—good in the hands of bona fide holder, but void as between the original parties.

A provision to pay attorney's fees is held void as an evasion of the usury law and as providing without consideration for a penalty of forfeiture.[4]

4—Boozer v. Anderson, 42 Ark. 167.

Such a provision does not, however, render the note non-negotiable.[5]

5—Trader v. Chilester, 41 Ark. 242, 48 Am. Rep. 38; Overton v. Matthews, 35 Ark. 146, 37 Am. Rep. 9.

An irregular or anomalous indorser is presumed to be either a maker or surety.[6]

6—Killian v. Ashley, 24 Ark. 511, 91 Am. Dec. 519; Nathan v. Sloan, 34 Ark. 524; Lake v. Little Rock Trust Co., 77 Ark. 53, 7 A. & E. An.

Cas. 394; Heise v. Brunpass, 40 Ark. 545; Scanland v. Porter, 64 Ark. 470, 42 S. W. 897. On proof of intention.

By statute an acceptance of a bill of exchange must be in writing in order to charge an acceptor; damages, however, may be recovered on a parol promise and there may be an implied acceptance.[7]

7—Ark. Statutes, Chap. 14, Sec. 495; Ark. Statutes, Chap. 14, Sec. 499. Damages may be recovered of party making a partial promise if he refuses to accept. See also Kinney and Goodrich v. Heald, 17 Ark. 397.

Any person upon whom a bill of exchange is drawn and to whom the same may be delivered for acceptance, who shall destroy such bill, or refuse within twenty-four hours after such delivery, or within such time as the holder may allow to return the bill accepted or unaccepted to the holder is deemed to have accepted the same.[8]

8—Statutes of Ark., Chap. 14, Sec. 500.

All blank assignments are taken to have been made on such day as shall be most to the advantage of the defendant.[9]

9—Ark. Statutes, Chap. 14, Sec. 520. Only applies in the absence of evidence as to date of assignment. Trieber v. Com. Bank, 31 Ark. 128. Statutory rule may be overcome by proof that it was before maturity of the note. Tabor v. Merchants Natl. Bank, 48 Ark. 454.

All indorsers or assignors of any instrument in writing assignable by law, which by its terms is payable "without discount or defalcation," may be notified of non-payment or protest of such instrument, and are equally liable with the maker, obligee or payee thereof, or may be sued separately.[10]

10—Ark. Statutes, Chap. 14, Sec. 522. Must be for money *alone*. Jones v. State, etc., 40 Ark. 344.

The payer and drawer of all notes, drafts and bills of exchange, executed or drawn in payment of any patent right territory is permitted to make all the defenses against any assignee, indorser, holder or purchaser of such instruments, that could have been made against the original payee or drawee, whether such instrument be assigned or transferred before maturity or not.[11]

11—Ark. Statutes, Chap. 14, Sec. 512.

CALIFORNIA.

Negotiable instruments may contain a pledge of collateral security with authority to dispose thereof.[1]

1—Civil Code, Sec. 3092.

A material alteration absolutely avoids the instrument.[2]

2—Walsh v. Hunt (Cal.) 52 Pac. 115 (1898). Bona fide holder not protected.

One who indorses a negotiable instrument before it is delivered to the payee is liable to the payee thereon as an indorser.[3]

3—California Civil Code, Sec. 3117. Fessenden v. Summers, 62 Cal. 484. The statute applies only to negotiable instruments. Such an indorser of a non-negotiable instrument is presumed to be a guarantor. San Diego First Nat. Bank v. Babcock, 94 Cal. 96, 29 Pac. 415, 78 Am. St. Rep. 94.

Acceptances must be in writing by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill with or without other words.[4]

4—Cal. Civil Code, Sec. 3193.

The acceptance of a bill of exchange by a separate instrument binds the acceptor to one who, upon the faith thereof, has the bill for value or other good consideration.[5]

5—Cal. Civil Code, Sec. 3196.

The holder of a bill of exchange, if entitled to an acceptance thereof, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.[6]

6—Civil Code, Sec. 3194.

An unconditional promise in writing to accept a bill of exchange is a sufficient acceptance thereof in favor of every person who, upon the faith thereof, has taken the bill for value or other good consideration.[7]

7—Civil Code, Sec. 3197. Nagle v. Lyman, 14 Cal. 450.

If a promissory note, payable on demand or at sight, without interest, is not duly presented for payment within six months from its date, the indorsers thereof are exonerated unless such presentation is excused.[8]

8—Civil Code, Sec. 3248.

The apparent maturity[9] of a bill of exchange payable at sight or on demand, is, if it bears interest, one year after date; if it does not bear interest, ten days after date, in addition to the time required to forward it for acceptance.[10] If not pre-

9—Meyer v. Weber, 133 Cal. 681; Findley v. Pott, 131 Cal. 385; Adams v. Seman, 82 Cal. 636, 7 L. R. A. 224, 23 Pac. 53.

10—Cal. Civil Code, Sec. 3134.

sented within six months from its date, the indorsers thereof are exonerated unless such presentation is excused.[11] A negotiable instrument may contain a pledge of collateral security with authority to dispose thereof.[12] If the paper contains a provision to pay attorney's fees such agreement renders the instrument non-negotiable.[13]

11—Cal. Civil Code, Sec. 3189.
12—Cal. Civil Code, Sec. 3092.
13—Cal. Civil Code, Sec. 3088.

DELAWARE.

An irregular or anomalous indorser is held to be a maker.[1]

1—Gilpin v. Marley, 4 Houst. (Del.) 284, jointmaker; Massey v. Turner, 2 Houst. (Del.) 79, original promisor.

An oral acceptance is good in the absence of a statute requiring that the acceptance be in writing.[2]

2—Bancroft v. Denny, 5 Houst. (Del.) 9. Verbal acceptance is good and no statute in this state.

A married woman is not liable as an accommodation indorser for her husband.[3]

3—Kohn v. Collison, 1 Marvel 109; Wright v. Parvis Co., 1 Marvel 325.

GEORGIA.

Negotiable instruments payable to the agent of a corporation may be sued on in its name.[1]

1—McConnell v. East Point Land Co., 100 Ga. 129. Held in such a case where principal is not disclosed, principal may sue on the same, but the maker would have the same defenses against the principal as he would have against the agent.

In this state there are decisions holding an irregular or anomalous indorser to be an indorser;[2] *prima facie* a second indorser;[3] maker;[4] surety.[5] The reason for this conflict is

2—Collins v. Everett, 4 Ga. 266.
3—Neal v. Wilson, 79 Ga. 736, 5 S. E. 54.
4—Hardy v. White, 60 Ga. 454; Quinn v. Sterne, 26 Ga. 223; 71 Am. Dec. 204.
5—Rixley v. Hightower, 112 Ga. 476, 37 S. E. 733; Eppens v. Forbes, 82 Ga. 748, 9 S. E. 723; Camp v. Simmons, 62 Ga. 73 (unless endorsed by payee).

that the intent governs and parol evidence is admissible to show the intent of the parties in the irregular indorsement.[6]

6—Neal v. Wilson, 79 Ga. 736, 5 S. E. 54; Hardy v. White, 60 Ga. 454.

Blank indorsements of negotiable paper may always be explained between the parties themselves, or those taking, with notice of dishonor, or of the actual facts of such indorsements.[7]

7—Lynch v. Goldsmith, 64 Ga. 42; can be explained.

In case a blank has been filled in with an amount greater than that authorized by the maker a holder who knew that the authorized limit had been exceeded may recover from the maker the amount actually authorized, the note being void as to the excess only.[8]

8—Cower v. Wynn, 59 Ga. 246; Moody v. Threlkeld, 13 Ga. 55, bona fide purchaser protected.

A provision to pay attorney's fees does not make such an instrument non-negotiable, but the provision cannot be enforced unless ten days' notice is given of intention to sue.[9]

9—Acts 1900, p. 53; Supp. Ga. Code (1901) 6185.

A bona fide holder is protected from all defenses except:

1. *Non est factum,* or defense denying the execution of the instrument.
2. Gambling or immoral and illegal consideration.[10]
3. Fraud in its procurement.[11]

Protest is unnecessary except in the following cases:

1. When the paper is made payable on its face at a bank or banker's office.[12]
2. When it is discounted at a bank or banker's office.
3. When it is left at a bank or banker's office for collection.[13]

10—Georgia Code, 3694 (1895).
11—Georgia Code, 3694 (1895).
12—Georgia Code, 3688 (1895).
13—Georgia Code, 3688 (1895).

Acceptances must be in writing.[14]

14—Georgia Code, Sec. 2693 (1895).

Signing by the drawee across the face of a draft without the word "accepted" is a good acceptance.[15]

15—Such complied with the statute. Fowler v. Gate City Natl. Bank, 88 Ga. 29, 13 S. E. 831.

It is unnecessary to protest except to bind indorsers and then only when an instrument is made payable on its face at a bank or banker's office or when it is discounted at a banker's or broker's office, or when it is left at a bank or banker's office for collection.[16]

16—Ga. Code, Sec. 3688.

INDIANA.

If an instrument is made payable, "with exchange," it is non-negotiable.[1]

1—John Church Co. v. Spurrier, 20 Ind. App. 39, 50 N. E. 93; Nicely v. Commercial Bank, 15 Ind. App. 563, 57 Am. St. Rep. 245, 44 N. E. 572.

The instrument is non-negotiable if it contains a provision that the payee or holder may extend the time of payment indefinitely.[2]

2—Mitchell v. St. Mary, etc., 148 Ind. 111, 47 N. E. 224; Merchants, etc. Sav. Bank v. Fraze, 9 Ind. App. 161, 36 N. E. 378; Glidden v. Henry, 104 Ind. 278, 1 N. E. 369. 54 Am. Dec. 316.

Paper made payable in "current funds" is non-negotiable.[3]

3—Nat. State Bank v. Ringle, 51 Ind. 393; Cornwell v. Pumphrey, 9 Ind. 135, 68 Am. Dec. 611.

A promissory note's negotiability is conditional upon its being made payable in bank.[4]

4—Scotten v. Randolph, 96 Ind. 581; Parkinson v. Finch, 45 Ind. 122; Roeminger v. Keyes, 73 Ind. 375; Hardy v. Brier, 91 Ind. 91.

An oral acceptance is good in the absence of a statute requiring that the acceptance be in writing.[5]

5—Miller v. Neihans, 51 Ind. 401; Spurgeon v. Swain, 13 Ind. App. 188, 41 N. E. 397; Louisville, etc. Ry. Co. v. Caldwell, 98 Ind. 245. Cases hold the promise to pay is to pay his own debt and not the debt of another—therefore not within the Statute of Frauds.

An irregular or anomalous indorser is held to be presumptively an indorser.[6]

6—Depauw, etc. v. Salem Bank, 126 Ind. 553, 25 N. E. 705, 10 L. R. A. 46; Moorman v. Wood, 117 Ind. 144, 19 N. E. 739; Knopf v. Morel, 111 Ind. 570, 13 N. E. 51; Cottrell v. Shadley, 77 Ind. 348; Kealing v. Vansickle, 74 Ind. 529, 39 Am. Rep. 101.

But parol evidence is admissible to show the actual intention of the parties in the irregular indorsement.[7]

7—Knopf v. Morel, 111 Ind. 570, 13 N. E. 51; Cottrell v. Shadley,

77 Ind. 348; Kealing v. Vansickle, 74 Ind. 529, 39 Am. Rep. 101; Browning v. Merritt, 61 Ind. 425; Moore v. Chittenden, 56 Ind. 462; Roberts v. Masten, 40 Ind. 461; Schulz v. Klenk, 49 Ind. 212.

MAINE.

If a note is payable at a place certain on demand, or on demand after a time specified, demand must be proved before a suit begins.[1]

1—Rev. Stat. of Maine, Sec. 13, p. 375 (1903).

A provision to pay attorney's fees renders the instrument non-negotiable.[2]

2—Roads v. Webb, 91 Me. 406—because it makes the sum uncertain.

If a note is payable at a certain place on demand, demand before suit must be proved unless a written waiver of demand has been made.[3]

3—Rev. Statutes (1903), Sec. 13, p. 375 (1903).

If one, not the payee of a negotiable note, indorses it in blank at the time of its inception and before delivery, he is regarded as an original promisor or joint maker.[4]

4—Merchants' Trust Co. v. Jones, 95 Me. 335, 50 Atl. 48, 85 Am. St. Rep. 412; Bradford v. Prescott, 85 Me. 482, 27 Atl. 461; Stevens v. Parsons, 80 Me. 351, 14 Atl. 741; Colburn v. Averill, 30 Me. 310, 50 Am. Dec. 630.

Acceptance must be in writing.[5]

5—Rev. Stat., Sec. 13, p. 375 (1903).

Waiver of demand and notice must be in writing.[6]

6—Rev. Stat., Sec. 13, p. 375 (1903). Parshley v. Heath, 69 Me. 90—waiver by indorser must be in writing.

Where a note is given for land conveyed, and a total failure of consideration would be a defense, partial failure of consideration may be shown in reduction of damages.[7]

7—Rev. Statutes of Maine, Sec. 40, p. 743 (1903). Severance v. Whittier, 24 Me. 120.

MINNESOTA.

All parties liable upon negotiable instruments may be joined in the same action at the option of the plaintiff.[1]

1—Revised Laws of Minnesota (1905), 4062. Maker and guarantor of an instrument may be joined—Hammel v. Beardsley, 31 Minn. 314.

A provision in an instrument for an increase of the rate of interest after maturity, or any increase therein after making and delivery works a forfeiture of the entire interest.[2]

2—Rev. Laws, 1905, Sec. 2733. This statute also says: "But this provision shall not apply to notes or contracts which bear no interest before maturity." If no provision for interest before maturity, note bears legal rate of interest after maturity—Owsley v. Greenwood, 18 Minn. 429.

An agreement to pay attorney's fees renders the instrument non-negotiable.[3]

3—Jones v. Rodatz, 27 Minn. 240. Jones v. Rodatz (*supra*) prevents negotiability because it introduces an element of uncertainty.

A material alteration absolutely avoids the instrument even in the hands of an innocent holder.[4]

4—Seebold v. Tatlie, 76 Minn. 131, 78 N. W. 967. Seebold v. Tatlie (*supra*) being alteration of date of maturity.

The legal effect of a blank indorsement written on the back of a promissory note, before delivery by one not a party to the note, is to make him an absolute maker or promisor.[5]

5—Marienthal v. Taylor, 2 Minn. 147; Demnis v. Jackson, 57 Minn. 286, 59 N. W. 198, 47 Am. St. Rep. 603; Schultz v. Howard, 63 Minn. 196, 56 Am. St. Rep. 470. Dennis v. Jackson (*supra*), holds he is conclusively a maker, not to be varied by parol evidence. Schultz v. Howard (*supra*) same; shows doctrine was taken from Mass. law.

In case a stranger to the transaction indorses the note after a prior indorsement by the payee and below the signature of the payee he is conclusively presumed to be a second indorser.[6]

6—Bowler v. Braun, 63 Minn. 32, 65 N. W. 124, 56 Am. St. Rep. 449. Bowler v. Braun *(supra)* supports text—can't vary by parol evidence as between second indorser and holder.

Parol evidence is admissible to show the intent with which irregular indorser signed.[7]

7—Peterson v. Russell, 62 Minn. 223, 29 L. R. A. 612; Buck v. Hutchins, 45 Minn. 270.

By statute an acceptance must be in writing.[8]

8—Revised Laws of Minn. (1905), Sec. 2742—Acceptance must be in writing.

A demand upon a note payable on demand, made at or within sixty days from its date, is sufficient to charge the indorser, and must be made within such period to hold the indorser.[9]

9—Revised Laws of Minn. (1905), Sec. 2741—Applies also to certifi-

cate of deposit which is in legal effect a promissory note. Mitchell v. Easton, 37 Minn. 335.

Notice of protest must be given immediately after protest is made by mailing the same to each party protested against at his reputed place of residence.[10]

10—Revised Laws of Minn. (1905), Sec. 2662—Mailing of notice is prima facie evidence of its receipt. Wilson v. Richards, 28 Minn. 337.

MISSISSIPPI.

Provision for attorney's fees does not affect negotiability or impair the liability of an indorser.[1]

1—Clifton v. Bank, 75 Miss. 929, 23 So. 394.

By statute an acceptance must be in writing and an unconditional promise, in writing, duly subscribed by the promisor or his agent, to accept a bill before it is drawn amounts to an acceptance of it.[2]

2—Code 1906, Sec. 4012.

An irregular or anomalous indorser is *prima facie* liable as an original promisor and co-maker.[3]

3—Polkinghorne v. Hendricks, 61 Miss. 366; Richardson v. Foster, 73 Miss. 12, 55 Am. St. Rep. 481; Thomas v. Jennings, 5 Sm. & M. 627.

And parol evidence is admissible to show the intent with which the irregular indorser signed.[4]

4—Richardson v. Foster, 73 Miss. 12, 55 Am. St. Rep. 481; Polkinghorne v. Hendricks *(supra)*; Thomas v. Jennings *(supra)*, co-maker. Richardson v. Foster *(supra)*—Parol evidence is admissible to show intention. But see Pearl v. Cortright, 81 Miss. 300. Holds that even when he signs in pursuance of an agreement between payee and original maker that he is to be a surety, he becomes a co-maker.

In case a blank has been filled in with an amount greater than that authorized by the maker, a holder who knew that the authorized limit had been exceeded may recover from the maker the amount actually authorized, the note being void as to the excess only.[5]

5—Goss v. Whitehead, 33 Miss. 213; Goad v. Hart, 8 Sm. & M. (Miss.) 787; Johnson v. Blasdale, 1 Sm. & M. (Miss.) 17, 14 Am. Dec. 85; Simmons v. Atkinson, 69 Miss. 862.

An instrument of writing by which the makers promise to pay on a given day to the payee a stated sum, "in notes of the banks of the state of Mississippi," value received, payable and negotiable in any bank in the state of Mississippi, is a negotiable promissory note.[6]

6—Besanin v. Shirley, 9 Sm. & M. (Miss.) 457.

If part of a note rests on a valid consideration and part be tainted and the two are capable of separation, a recovery may be had of so much as is good.[7]

7—Clopton v. Elkins Admr., 49 Miss. 95, 107. Carradine v. Wilson, 61 Miss. 573—holding that if there are several notes each exceeding the amount of the illegal consideration, the holder may elect to which the defense shall apply and recover on the other.

Demand and notice are necessary to fix liability of parties secondarily liable.[8]

8—Thrasher v. Ely, 2 Sm. & M. 139—Necessary to hold indorsers, but not guarantors.

Domestic bills drawn on and payable in this state for $20.00 or upward must be protested for non-acceptance or, if accepted for non-payment, they are governed by the same customs and usages as foreign bills of exchange, but no damage accrues.[9]

9—Code, Sec. 4004 (1906).

NEW HAMPSHIRE.

(On January 1, 1910, the Negotiable Instruments Law goes into effect in New Hampshire and thereafter the provisions of that law will control.)

The words "Value received" are not essential.[1]

1—Martin v. Stone, 67 N. H. 367, 29 Atl. 845. Omission of words has been regarded as ground for suspicion. Harriman v. Sanborn, 43 N. H. 128.

An oral acceptance is good in the absence of a statutory requirement for a written one.[2]

2—Barnet v. Smith, 30 N. H. 256, 64 Am. Dec. 290; Edson v. Fuller, 22 N. H. 183. When a note is payable on demand it is considered as maturing 60 days from date, without grace. Session Laws New Hampshire, p. 664 (1900).

An irregular or anomalous indorser is liable as an original promisor or maker.[3]

3—McFetrich v. Woodrow, 67 N. H. 174, 38 Atl. 18; Curner v. Fellows, 27 N. H. 366; Martin v. Boyd, 11 N. H. 385, 35 Am. Dec. 501.

Demand notes must be protested within sixty days from day of their making to hold indorsers.[4]

4—Statutes of N. H. 1900, p. 664, Sec. 5, last clause.

SOUTH CAROLINA.

An agreement to pay attorney's fees does not render the paper non-negotiable.[1]

1—Act 2nd March, '03; 24 Stat. 69.

An irregular indorser is presumed to be an original promisor and maker in the absence of notice to the contrary.[2]

2—Gibbes Machine Co. v. Roper, 77 S. C. 79; Sylvester et Co. v. Alewine, 48 S. C. 308, 26 S. E. 609, 37 L. R. A. 86; Bank v. Florence Tobacco Co., 45 S. C. 373; Johnson v. McDonald, 41 S. C. 81, 19 S. E. 65; McCreary v. Bird, 12 Rich (S. C.) 554; Carpenter v. Oaks, 10 Rich (S. C.) 17; Baker v. Scott, 5 Rich (S. C.) 305.

The intent with which he signed controls the liability of an irregular indorser to holders with notice; in the absence of notice he is an original promisor.[3]

3—McClevery v. Noble, 12 Rich (S. C.) 167; Bank v. Mahon, 75 S. C. 255.

No protest is needed on an inland bill for less than one hundred dollars.[4]

4—Civil Code of S. Car., Sec. 1668, p. 651.

SOUTH DAKOTA.

If an instrument is made payable "with exchange" it is non-negotiable.[1]

1—Aurora Sec. Nat. Bank v. Basiner, 65 Fed. 58, decided under S. D. Stat.

A stipulation for a certain discount if a note is paid before maturity renders it non-negotiable because of the uncertainty of the amount to be paid.[2]

2—National Bank of Commerce v. Freeney, 9 S. Dak. 550, 70 N. W. 874, 46 L. R. A. 732.

A provision to pay an increased rate of interest if the note is not paid when due renders it non-negotiable.[3]

3—Hegeder v. Comstock, 1 S. D. 138, 45 N. W. 331, 8 L. R. A. 393; Merrill v. Hurley, 6 S. D. 592, 62 N. W. 598, 55 Am. St. Rep. 859.

A provision to pay attorney's fees is void and does not affect the negotiability of the note.[4]

4—Chandler v. Kennedy, 8 S. Dak. 56; Johns v. Sehan, 9 S. D. 536; Nat. Bank of Commerce v. Freeney, 9 S. D. 550, 70 N. W. 874, 46 L. R. A. 732.

The apparent maturity of a bill of exchange, payable at sight or demand, is, if it bears interest, one year after its date; or if it does not bear interest ten days after date.[5] The apparent maturity of a promissory note, payable at sight or on demand, is, if it bears interest, one year from its date, or if it does not bear interest, six months from its date.[6]

A stipulation for the payment of a reasonable attorney fee is void but does not destroy the negotiability of the note. Notes given for lightning rods, patent rights, or for premium or assessments for mutual hail insurance or for medical treatment or medicine must be stamped to show the consideration, and when so stamped are non-negotiable.[7]

5—Compiled Laws of S. Dak. (1908), Sec. 2206.

6—Sec. 2207.

7—Compiled Laws of S. Dak., following Sec. 2278, and designated under title Chap. 140, Laws 1905.

Acceptances must be in writing by the drawee or an acceptor for honor.[8]

8—Compiled Laws of S. Dak. (Civil Code 1908), Sec. 2242.

A bill of exchange, payable at a certain time after sight, which is not accepted within ten days after its date in addition to the time which would suffice with ordinary diligence to forward it for acceptance is presumed to have been dishonored.[9]

9—Compiled Laws of S. Dak. (Civil Code 1908), Sec. 2240.

TEXAS.

If payable "in current funds" the instrument is not negotiable.[1]

1—Tex. Land etc. Co. v. Carroll, 63 Tex. 48, 52.

It is not required that negotiable instruments should be payable at a bank or any fixed place in the state.[2]

2—Mixel v. Cameron, 31 Tex. 616—Instrument need not name place or time when made. Bullard v. Thompson, 35 Tex. 313—If place of payment is not named—same may be shown by parol evidence.

An oral acceptance is good in the absence of a statute requiring it to be in writing.[3]

3—Neuman v. Schrader, 71 Tex. 81, 8 S. W. 632, 20 Tex. 324; Lemmon v. Box, 20 Tex. 324; White v. Dienger, (Tex. Civ. App. 1894), 25 S. W. 666.

An irregular indorser is *prima facie* liable as an original promisor or surety but he may show the nature of his undertaking by parol evidence.[4]

4—Cook v. Southwich, 9 Tex. 615, 60 Am. Dec. 181; Carr v. Rowland, 14 Tex. 275; Barton v. American Nat. Bank, 8 Tex. Civ. App. 223. Such an indorser has been considered as a guarantor. Horton v.

Manning, 37 Tex. 23. See also Hueske v. Broussard, 55 Tex. 201—same.

The liability of any drawer or indorser may be fixed by instituting suit against the acceptor or maker before the first term of the district or county court to which suit can be brought, or before the second term, showing good cause why not brought at the first term; within the jurisdiction of a justice, suit must be brought within sixty days. Such liability may also be fixed by protest, according to the custom of merchants.[5]

5—(1888) Revised Civil Statutes, Art. 262. Vitkovitch v. Kleinecke, 75 S. W. (Tex.) 544.

In a suit by the assignee or indorsee of any written instrument the assignment or indorsement thereof is regarded as fully proved unless the defendant shall deny in his plea that the same is genuine, and, moreover, shall file with the papers in the cause an affidavit, stating that he has good cause to believe, and verily does believe, that such assignment or indorsement is forged.[6]

6—Art. 271, Rev. Civ. Statutes (1888). Grounds v. Sloan, 73 Tex. 662.

VERMONT.

An instrument is not negotiable if it provides for payment in "current funds."[1]

1—Collins v. Lincoln, 11 Vermont 268—because not in a legal sense money.

An oral acceptance is good in the absence of a statutory requirement that it be in writing.[2]

2—In re Goddard, 66 Vt. 415, 29 Atl. 634; Fisher v. Beckwith, 19 Vt. 31, 46 Am. Dec. 174.

An irregular indorser is considered *prima facie* as a maker.[3]

3—Ballard v. Burton, 64 Vt. 387, 24 Atl. 769, 16 L. R. A. 664; Bellows Falls Nat. Bank v. Dorset Marble Co., 61 Vt. 106, 17 Atl. 42, 2 L. R. A. 428; Pitkin v. Flanagans, 23 Vt. 160, 56 Am. Dec. 61; Sylvester v. Downer, 20 Vt. 355, 49 Am. Dec. 786; Strong v. Riker, 16 Vt. 554; Barrows v. Lane, 5 Vt. 161, 26 Am. Dec. 293.

But the actual contract of the irregular indorser may always be shown by evidence other than the declaration of the indorser.[4]

4—Pitkin v. Flanagans, 23 Vt. 160, 56 Am. Dec. 61; Sylvester v. Downer, 20 Vt. 355, 49 Am. Dec. 786; Strong v. Riker, 16 Vt. 554.

In actions on bills and notes between the original parties, partial failure of consideration may be set up as partial defense.[5]

5—Statutes of Vt. (1906), Sec. 1502.

Notes payable on demand are considered overdue after sixty days from date. To charge the indorsers on such notes, presentment for payment must be made on or before sixty days from date.[6]

6—Statutes of Vt. (1906), Sec. 2697.

APPENDIX C.

BILLS OF EXCHANGE ACT, 1882.

45 AND 46 VICT., CH. 61.

An act to codify the law relating to bills of exchange, cheques, and promissory notes.

[18*th August*, 1882.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I.

PRELIMINARY.

1. Short title.

This act may be cited as the Bills of Exchange Act, 1882.

2. Interpretation of terms.

In this act, unless the context otherwise requires—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking.

"Bankrupt" includes any person whose estate is vested in a trustee or assignee, under the law for the time being in force relating to bankruptcy.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

PART II.

BILLS OF EXCHANGE.

Form and Interpretation.

3. Bill of exchange defined.

(1) A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time, a sum certain in money or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (*a*) an indication of a particular fund out of which the drawee is to re-imburse himself or a particular account to be debited with the amount, or (*b*) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

(*a*) That it is not dated;

(*b*) That it does not specify the value given, or that any value has been given therefor;

(*c*) That it does not specify the place where it is drawn or the place where it is payable.

4. Inland and foreign bills.

(1) An inland bill is a bill which is, or on the face of it purports to be—(*a*) both drawn and payable within the British Islands, or (*b*) drawn within the British Islands upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this act "British Islands" mean any part of the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney, and Sark, and the Islands adjacent to any of them being part of the dominions of Her Majesty.

(2) Unless the contrary appears on the face of the bill the holder may treat it as an inland bill.

5. Effect where different parties to bill are the same person.

(1) A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

6. Address to drawee.

(1) The drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees whether they are partners or not, but an order addressed to two drawees in the alternative, or two or more drawees in succession, is not a bill of exchange.

7. Certainty required as to payee.

(1) Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer.

8. What bills are negotiable.

(1) When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

9. Sum payable.

(1) The sum payable by a bill is a sum certain within the meaning of this act, although it is required to be paid—

(*a*) With interest.

(*b*) By stated instalments.

(*c*) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due.

(*d*) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof.

10. Bill payable on demand.

(1) A bill is payable on demand—

(*a*) Which is expressed to be payable on demand, or at sight, or on presentation; or

(*b*) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

11. Bill payable at a future time.

A bill is payable at a determinable future time within the meaning of this act which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

12. Omission of date in bill payable after date.

Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly.

Provided that (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course, the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

13. Ante-dating and post-dating.

Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is ante-dated or post-dated, or that it bears date on a Sunday.

14. Computation of time of payment.

Where a bill is not payable on demand, the day on which it falls due is determined as follows:

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace:

Provided that:

(*a*) When the last day of grace falls on Sunday, Christmas Day, Good Friday, or a day appointed by Royal proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day;

(*b*) When the last day of grace is a bank holiday (other than Christmas day or Good Friday) under the Bank Holidays Act, 1871,* and acts amending or extending it, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

*34 and 35 Vict. ch. 17.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance or for non-delivery.

(4) The term "month" in a bill means calendar month.

15. Case of need.

The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is the option of the holder to resort to the referee in case of need or not as he may think fit.

16. Optional stipulations by drawer or indorser.

The drawer of a bill, and any indorser, may insert therein an express stipulation—

(1) Negativing or limiting his own liability to the holder;

(2) Waiving as regards himself some or all of the holder's duties.

17. Definition and requisites of acceptance.

(1) The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:

(*a*) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(*b*) It must not express that the drawee will perform his promise by any other means than the payment of money.

18. Time for acceptance.

A bill may be accepted—

(1) Before it has been signed by the drawer, or while otherwise incomplete:

(2) When it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment:

(3) When a bill payable after sight is dishonored by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

19. General and qualified acceptances.

(1) An acceptance is either (*a*) general or (*b*) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is—

(*a*) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated:

(*b*) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn:

(*c*) Local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere:

(*d*) Qualified as to time:

(*e*) The acceptance of some one or more of the drawees, but not of all.

20. Inchoate instruments.

(1) Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into bill, it operates as a prima facie authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a prima facie authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given.

Reasonable time for this purpose is a question of fact.

Provided that if any such instrument after completion is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

21. Delivery.

(1) Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto.

Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(*a*) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be:

(*b*) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

Capacity and Authority of Parties.

22. Capacity of parties.

(1) Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto.

23. Signature essential to liability.

No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such:

Provided that—

(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name:

(2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

24. Forged or unauthorized signature.

Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority.

Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

25. Procuration signatures.

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority.

26. Person signing as agent or in representative capacity.

(1) Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability.

(2) In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the con-

struction most favorable to the validity of the instrument shall be adopted.

The Consideration for a Bill.

27. Value and holder for value.

(1) Valuable consideration for a bill may be constituted by—

(*a*) Any consideration sufficient to support a simple contract;

(*b*) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

28. Accommodation bill or party.

(1) An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

29. Holder in due course.

(1) A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions; namely,

(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact:

(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

30. Presumption of value and good faith.

(1) Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.

(2) Every holder of a bill is prima facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that

the acceptance, issue, or subsequent negotiation of the bill, is affected with fraud, duress or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

Negotiation of Bills.

31. Negotiation of bill.

(1) A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

32. Requisites of a valid indorsement.

An indorsement in order to operate as a negotiation must comply with the following conditions, namely:

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse, unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described adding, if he thinks fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive.

33. Conditional indorsement.

Where a bill purports to be indorsed conditionally, the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

34. Indorsement in blank and special indorsement.

(1) An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

35. Restrictive indorsement.

(1) An indorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorizes him to do so.

(3) Where a restrictive indorsement authorizes further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

36. Negotiation of overdue or dishonored bill.

(1) Where a bill is negotiable in its origin it continues to be negotiable until it has been (*a*) restrictively indorsed or (*b*) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is prima facie deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonoured any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this sub-section shall affect the rights of a holder in due course.

37. Negotiation of bill to party already liable thereon.

Where a bill is negotiated back to the drawer, or to a prior indorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled

to enforce payment of the bill against any intervening party to whom he was previously liable.

38. Rights of the holder.

The rights and powers of the holder of a bill are as follows:

(1) He may sue on the bill in his own name:

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill:

(3) Where his title is defective (*a*) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (*b*) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

General Duties of the Holder.

39. When presentment for acceptance is necessary.

(1) Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

40. Time for presenting bill payable after sight.

(1) Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

41. Rules as to presentment for acceptance, and excuses for non-presentment.

(1) A bill is duly presented for acceptance which is presented in accordance with the following rules:

(*a*) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue:

(*b*) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only:

(*c*) Where the drawee is dead, presentment may be made to his personal representative:

(*d*) Where the drawee is bankrupt, presentment may be made to him or his trustee:

(*e*) Where authorized by agreement or usage, a presentment through the post office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance—

(*a*) Where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill:

(*b*) Where, after the exercise of reasonable diligence, such presentment cannot be effected:

(*c*) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment.

42. Non-acceptance.

(1) When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

43. Dishonour by non-acceptance and its consequences.

(1) A bill is dishonoured by non-acceptance—

(*a*) When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

(*b*) When presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

44. Duties as to qualified acceptances.

(1) The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

(2) Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this sub-section do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

45. Rules as to presentment for payment.

Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:—

(1) Where the bill is not payable on demand, presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement, in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place:—

(*a*) Where a place of payment is specified in the bill and the bill is there presented.

(*b*) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(*c*) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.

(*d*) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorized by agreement or usage a presentment through the post-office is sufficient.

46. Excuses for delay or non-presentment for payment.

(1) Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When

the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with,—

(*a*) Where, after the exercise of reasonable diligence, presentments as required by this Act, cannot be effected.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment.

(*b*) Where the drawee is a fictitious person.

(*c*) As regards the drawer where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(*d*) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(*e*) By waiver of presentment, express or implied.

47. Dishonour by non-payment.

(1) A bill is dishonoured by non-payment (*a*) when it is duly presented for payment and payment is refused or cannot be obtained, or (*b*) when presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

48. Notice of dishonour and effect of non-notice.

Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged;

Provided that—

(1) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment unless the bill shall in the meantime have been accepted.

49. Rules as to notice of dishonour.

Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules:—

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled

to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment.

(6) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11) Where there are two or more drawers or indorsers who are not partners notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter.

In the absence of special circumstances notice is not deemed to have been given within a reasonable time, unless—

(a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill.

(b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour.

(15) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the post-office.

50. Excuses for non-notice and delay.

(1) Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving

notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonour is dispensed with—

(*a*) When, after the exercise of reasonable diligence, notice as required by this act cannot be given to or does not reach the drawer or indorser sought to be charged:

(*b*) By waiver, express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice:

(*c*) As regards the drawer in the following cases, namely, (1) where drawer and drawee are the same person, (2) where the drawee is a fictitious person or a person not having capacity to contract, (3) where the drawer is the person to whom the bill is presented for payment, (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill, (5) where the drawer has countermanded payment:

(*d*) As regards the indorser in the following cases, namely (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill, (2) where the indorser is the person to whom the bill is presented for payment, (3) where the bill was accepted or made for his accommodation.

51. Noting or protest of bill.

(1) Where an inland bill has been dishonoured it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this Act, when a bill is noted or protested, it must be noted on the day of its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonoured: Provided that—

(*a*) When a bill is presented through the post-office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and if not received dur-

ing business hours, then not later than the next business day:

(b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a) The person at whose request the bill is protested:

(b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

52. Duties of holder as regards drawee or acceptor.

(1) When a bill is accepted generally presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonour should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

Liabilities of Parties.

53. Funds in hands of drawee.

(1) A bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. This sub-section shall not extend to Scotland.

(2) In Scotland, where the drawee of a bill has in his hands funds available for the payment thereof, the bill operates as an assignment of the sum for which it is drawn in favor of the holder, from the time when the bill is presented to the drawee.

54. Liability of acceptor.

The acceptor of a bill, by accepting it—

(1) Engages that he will pay it according to the tenor of his acceptance:

(2) Is precluded from denying to a holder in due course:

(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.

(b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement;

(c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

55. Liability of drawer or indorser.

(1) The drawer of a bill by drawing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or an; indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonoured he will compensate the holder or a subsequent indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken;

(b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements;

(c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

56. Stranger signing bill liable as indorser.

Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

57. Measure of damages against parties to dishonoured bill.

Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(a) The amount of the bill:

(b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case:

(c) The expenses of noting, or, when protest is necessary, and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

58. Transferor by delivery and transferee.

(1) Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery."

(2) A transferor by delivery is not liable on the instrument.

(3) A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

Discharge of Bill.

59. Payment in due course.

(1) A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

"Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but

(a) Where a bill payable to, or to the order of, a third party is paid by drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill.

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

60. Banker paying demand draft whereon indorsement is forged.

When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee of any subsequent

indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

61. Acceptor the holder at maturity.

When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

62. Express waiver.

(1) When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged.

The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

63. Cancellation.

(1) Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

64. Alteration of bill.

(1) Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers.

Provided that,

Where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenour.

(2) In particular the following alterations are material, namely, any alteration of the date, the sum payable, the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

Acceptance and Payment for Honour.

65. Acceptance for honour supra protest.

(1) Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) A bill may be accepted for honour for part only of the sum for which it is drawn.

(3) An acceptance for honour supra protest in order to be valid must—

(*a*) Be written on the bill, and indicate that it is an acceptance for honour;

(*b*) Be signed by the acceptor for honour.

(4) Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer.

(5) Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the aceptance for honour.

66. Liability of acceptor for honour.

(1) The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted.

67. Presentment to acceptor for honour.

(1) Where a dishonoured bill has been accepted for honour supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

(2) Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonored by the acceptor for honour it must be protested for non-payment by him.

68. Payment for honour supra protest.

(1) Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honour of any party

liable thereon, or for the honour of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honour supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it.

(4) The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays.

(5) Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party.

(6) The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up, he shall be liable to the payer for honour in damages.

(7) Where the holder of a bill refuses to receive payment supra protest he shall lose his right of recourse against any party who would have been discharged by such payment.

Lost Instruments.

69. Holder's right to duplicate of lost bill.

Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

70. Action on lost bill.

In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

Bill in a Set.

71. Rules as to sets.

(1) Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different

holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this sub-section shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

Conflict of Laws.

72. Rules where laws conflict.

Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows:

(1) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance supra protest, is determined by the law of the place where such contract was made.

Provided that—

(*a*) Where a bill is issued out of the United Kingdom it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(*b*) Where a bill, issued out of the United Kingdom, conforms, as regards requisites in form, to the law of the United Kingdom, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United Kingdom.

(2) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the place where such contract is made.

Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of the United Kingdom.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

(4) Where a bill is drawn out of but payable in the United Kingdom and the sum payable is not expressed in the currency of the United Kingdom, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in an-

other, the due date thereof is determined according to the law of the place where it is payable.

PART III.

CHEQUES ON A BANKER.

73. Cheque defined.

A cheque is a bill of exchange drawn on a banker payable on demand.

Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque.

74. Presentment of cheque for payment.

Subject to the provisions of this Act—

(1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him.

75. Revocation of banker's authority.

The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by—

(1) Countermand of payment;

(2) Notice of the customer's death.

Crossed Cheques.

76. General and special crossings defined.

(1) Where a cheque bears across its face an addition of—(*a*) the words "and company" or any abbreviation thereof between two parallel transverse lines, either with or without the words "not negotiable;" or (*b*) two parallel transverse lines simply, either with or without the words "not negotiable;" that addition constitutes a crossing, and the cheque is crossed generally.

(2) Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable," that addition constitutes a crossing, and the cheque is crossed specially and to that banker.

77. Crossing by drawer or after issue.

(1) A cheque may be crossed generally or specially by the drawer.

(2) Where a cheque is uncrossed, the holder may cross it generally or specially.

(3) Where a cheque is crossed generally the holder may cross it specially.

(4) Where a cheque is crossed generally or specially, the holder may add the words "not negotiable."

(5) Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection.

(6) Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself.

78. Crossing a material part of cheque.

A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing.

79. Duties of banker as to crossed cheques.

(1) Where a cheque is crossed specially to more than one banker except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof.

(2) Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Provided that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a banker or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be.

80. Protection to banker and drawer where cheque is crossed.

Where the banker, on whom a crossed cheque is drawn, in good faith and without negligence pays it, if crossed generally, to a banker, and if crossed specially, to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof.

81. Effect of crossing on holder.

Where a person takes a crossed cheque which bears on it the words

"not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

82. Protection to collecting banker.

Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having such payment.

PART IV.

Promissory Notes.

83. Promissory note defined.

(1) A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof.

(4) A note which is, or on the face of it purports to be, both made and payable within the British Islands is an inland note. Any other note is a foreign note.

84. Delivery necessary.

A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

85. Joint and several notes.

(1) A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally according to its tenour.

(2) Where a note runs "I promise to pay" and is signed by two or more persons it is deemed to be their joint and several note.

86. Note payable on demand.

(1) Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

87. Presentment of note for payment.

(1) Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

88. Liability of maker.

The maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenour;

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

89. Application of Part II to notes.

(1) Subject to the provisions in this Part, and, except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes; namely, provisions relating to—

(*a*) Presentment for acceptance;

(*b*) Acceptance;

(*c*) Acceptance supra protest;

(*d*) Bills in a set.

(4) Where a foreign note is dishonoured, protest thereof is unnecessary.

PART V.

SUPPLEMENTARY.

90. Good faith.

A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not.

91. Signature.

(1) Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where by this Act any instrument

or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal.

But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

92. Computation of time.

Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purposes of this Act mean—

(a) Sunday, Good Friday, Christmas Day;

(b) A bank holiday under the Bank Holidays Act, 1871, or acts amending it;

(c) A day appointed by Royal proclamation as a public fast or thanksgiving day.

Any other day is a business day.

93. When noting equivalent to protest.

For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

94. Protest when notary not accessible.

Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

The form given in Schedule 1 to this Act may be used with necessary modifications, and if used shall be sufficient.

95. Dividend warrants may be crossed.

The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend.

96 Repeal.

The enactments mentioned in the second schedule to this Act are hereby repealed as from the commencement of this Act to the extent in that schedule mentioned.

Provided that such repeal shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest.

97. Savings.

(1) The rules in bankruptcy relating to bills of exchange, promissory notes, and cheques, shall continue to apply thereto notwithstanding anything in this Act contained.

(2) The rules of common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, promissory notes, and cheques.

(3) Nothing in this Act or in any repeal effected thereby shall affect—

(*a*) The provisions of the Stamp Act, 1870,* or acts amending it, or any law or enactment for the time being in force relating to the revenue;

(*b*) The provisions of the Companies Act, 1862,† or acts amending it, or any act relating to joint stock banks or companies;

(*c*) The provisions of any act relating to or confirming the privileges of the Bank of England or the Bank of Ireland respectively;

(*d*) The validity of any usage relating to dividend warrants, or the indorsements thereof.

98. Saving of summary diligence in Scotland.

Nothing in this Act or in any repeal effected thereby shall extend or restrict, or in any way alter or affect the law and practice in Scotland in regard to summary diligence.

99. Construction with other acts, etc.

Where any act or document refers to any enactment repealed by this Act, the act or document shall be construed, and shall operate, as if it referred to the corresponding provisions of this Act.

100. Parol evidence in judicial proceedings in Scotland.

In any judicial proceeding in Scotland, any fact relating to a bill of exchange, bank cheque, or promissory note, which is relevant to any question of liability thereon, may be proved by parol evidence: Provided that this enactment shall not in any way affect the existing law and practice whereby the party who is, according to the tenour of any bill of exchange, bank cheque, or promissory note, debtor to the holder in the amount thereof, may be required, as a condition of obtaining a sist of diligence, or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the court or judge before whom the cause is depending may require.

This section shall not apply to any case where the bill of exchange, bank cheque, or promissory note has undergone the sesennial prescription.

First Schedule.

Form of protest which may be used when the services of a notary cannot be obtained.

Know all men that I, A. B. (householder), of ..... in the county of ....., in the United Kingdom, at the request of C.

*33 and 34 Vict. c. 97.

†25 and 26 Vict. c. 89.

D., there being no notary public available, did on the ..... day of ..... 188.... at ..... demand payment (or acceptance) of the bill of exchange hereunder written, from E. F., to which demand he made answer (state answer, if any). Wherefore, I now in the presence of G. H. and J. K. do protest the said bill of exchange.

(Signed) A. B.

G. H. } Witnesses.
J. K. }

N. B.—The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

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